

# EXHIBIT 1

Bryson, Santana and Joshua v. Rough Country, LLC

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

SANTANA BRYSON and JOSHUA )  
BRYSON, as adminsitrators of )  
the Estate of C.Z.B. and as )  
surviving parents of C.Z.B., a )  
deceased minor., )

PLAINTIFF, )

VS. )CASE NO.: 2:22=CV=017-RWS

ROUGH COUNTRY LLC, )

DEFENDANT. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
FRIDAY, MAY 5, 2024

APPEARANCES:

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(Appearances continued next page.)

REPORTED BY: JUSTUS BALENTINE, CSR 13859

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<p>1 APPEARANCES CONTINUED:</p> <p>2 FOR THE DEFENDANT:</p> <p>3 WEINBERG, WHEELER, HUDGINS, GUNN &amp; DIAL, LLC</p> <p>4 BY: Richard H. Hill, II</p> <p>5 Attorney at Law</p> <p>6 3344 Peachtree Road, NE</p> <p>7 Atlanta, GA 30326</p> <p>8 TELEPhone: (404) 933-6327</p> <p>9 FACSIMILE: (404) 875-9433</p> <p>10 E-MAIL: rhill@wwhgd.com</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 VIDEOGRAPHER: Keigo Painter</p> <p>REPORTED BY: JUSTUS BALENTINE, CSR 13859</p>	<p>1 EXHIBITS</p> <p>2</p> <p>3 WITHDRAWN</p> <p>4 EXHIBIT FOR I.D. IN EVD. OR REJECTED</p> <p>5 Exhibit 15 Disclosure 171</p> <p>6 Exhibit 16 CV 122</p> <p>7 Exhibit 17 File Materials 125</p> <p>8 Exhibit 18 Testimony History 43</p> <p>9 Exhibit 19 Fee Schedule 110</p> <p>10 Exhibit 20 Billing 86</p> <p>11 Exhibit 21 Preliminary File 175</p> <p>12 Exhibit 22 Documents 176</p> <p>13 Exhibit 23 Medical Summary 177</p> <p>14 Exhibit 24 Prelim Med Sum 155</p> <p>15 Exhibit 25 Report 29</p> <p>16 Exhibit 26 Photo 155</p> <p>17 Exhibit 27 Radiology 152</p> <p>18 Exhibit 28 Document 148</p> <p>19 Exhibit 29 Notes 154</p> <p>20 Exhibit 30 PDF 144</p> <p>21 Exhibit 31 Billing Totals 96</p> <p>22 Exhibit 32 Photo 153</p> <p>23 Exhibit 35 Annotated Photo 61</p> <p>24 Exhibit 36 history list 154</p> <p>25 Exhibit 37 Annotated Photo 139</p> <p>Exhibit 38 Annotated Photo 140</p> <p>Exhibit 39 Annotated Photo 142</p> <p>Exhibit 40 Annotated Photo 146</p> <p>Exhibit 41 Photo 158</p> <p>Exhibit 42 Photo (R0017277) 159</p> <p>Exhibit 43 Photo 160</p> <p>Exhibit 44 Photo 161</p> <p>Exhibit 45 Photo 162</p> <p>Exhibit 46 Photo 165</p> <p>Exhibit 47 Testimony List 185</p> <p>Exhibit 48 Correspondence 190</p> <p>*No Exhibit 35 available.</p>
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<p>1 MASTER INDEX</p> <p>2</p> <p>3 FRIDAY, MAY 5, 2024</p> <p>4 ALPHABETICAL/CHRONOLOGICAL INDEX OF WITNESSES</p> <p>5</p> <p>6 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS</p> <p>7 Dr. Lisa P. Gwin</p> <p>8 By Ms. Cannella 6</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CASE NUMBER: 2:22=CV=017-RWS</p> <p>2 CASE NAME: SANTANA BRYSON, Et Al.</p> <p>3 VS. ROUGH COUNTRY LLC</p> <p>4 UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF</p> <p>5 GEORGIA, GAINSVILLE DIVISION FRIDAY, MAY 5, 2024</p> <p>6 COURT REPORTER: JUSTUS BALENTINE, CSR NO. 13859</p> <p>7 TIME: 9:00 A.M.</p> <p>8</p> <p>9 THE VIDEOGRAPHER: Good morning. We're going on</p> <p>10 the record at 9:14 a.m. on May 3, 2024. Please note that</p> <p>11 the microphones are sensitive and may pick up whispering</p> <p>12 and private conversations. Please mute your phone at</p> <p>13 this time. Audio and video recording will continue to</p> <p>14 take place unless all parties agree to go off the record.</p> <p>15 This is Media Unit I of the video recorded</p> <p>16 deposition of Dr. Lisa Gwin taken by the counsel for</p> <p>17 Plaintiff in the matter of Santana Bryson, et al., versus</p> <p>18 Rough Country LLC, filed in the United States District</p> <p>19 Court, Northern District of Georgia, Gainesville Division,</p> <p>20 Case No. 2:22-CV-17-RWS.</p> <p>21 The location of the deposition is 1 Kaiser</p> <p>22 Plaza, Suite 250, Oakland, California 94612.</p> <p>23 My name is Keigo Painter representing Veritext.</p> <p>24 I'm the videographer. The court reporter is</p> <p>25 Justus Balentine from the firm Veritext. I'm not related</p>

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<p style="text-align: right;">Page 6</p> <p>1 to any party in this action nor financially interested in 2 the outcome. 3 If there are any objections to the proceeding, 4 please state them at the time of your appearance. 5 Counsel and all present including remotely will now state 6 their appearances and liaisons for the record beginning 7 with the noticing attorney. 8 MS. CANNELLA: Tedra Cannella and Devin Mashman 9 for the plaintiff. 10 MR. HILL: Richard Hill for defendant, 11 Rough Country. 12 THE VIDEOGRAPHER: Okay. Will the court 13 reporter please swear in the witness, and then counsel 14 may proceed. 15 THE REPORTER: Do you solemnly state that the 16 evidence you will provide in the cause now pending will 17 be the truth, the whole truth, and nothing but the truth 18 so help you God? 19 THE WITNESS: Yes, I do. 20 DR. LISA P. GWIN, 21 having been previously duly sworn, 22 was examined and testified under oath as follows: 23 DIRECT EXAMINATION 24 BY MS. CANNELLA: 25 Q. Good morning, Dr. Gwin.</p>	<p style="text-align: right;">Page 8</p> <p>1 kinematics, which is human movement or human kinematics. 2 Q. Are you going to give testimony about 3 kinematics? 4 A. Yes. 5 Q. Kinematics is the study of human movement? 6 A. Yes. 7 Q. All right. 8 THE VIDEOGRAPHER: Tedra, hold on real quick. 9 MS. CANNELLA: Yes. 10 THE VIDEOGRAPHER: I want to make sure with the 11 video, since the video is not being used by your 12 computer, if you're looking at your computer screen, 13 you're not going to be looking at the camera potentially, 14 so I don't want your whole deposition to be you're 15 looking down at your screen -- 16 MS. CANNELLA: Oh, gotcha. 17 THE VIDEOGRAPHER: -- as opposed to the camera. 18 Does that make sense? 19 MS. CANNELLA: Perfect. 20 THE VIDEOGRAPHER: So -- 21 THE WITNESS: I'll look at Ms. Cannella -- 22 THE VIDEOGRAPHER: Maybe you'll need to look at 23 your screen when you're looking at a document. Does that 24 make sense? 25 MS. CANNELLA: Yes. It looks to me like you're</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Good morning. 2 Q. My name is Tedra Cannella. I represent the 3 plaintiffs, and I know you've done depositions before. 4 So I'll just say for the record, if I ask anything that's 5 unclear, let me know, and I'll try to do better. And if 6 you need a break, let me know as well, please. 7 A. Absolutely. 8 Q. All right. Great. This will be the deposition 9 of Dr. Lisa Gwin taken pursuant to agreement and notice 10 for all purposes permissible under the Federal Rules of 11 Civil Procedure. 12 All right. Dr. Gwin, is it fair to say that 13 biomechanics means the study of human movement? 14 A. No. 15 Q. What do you believe that the -- that 16 biomechanics is? 17 A. It's a marriage between medicine and science or 18 physics or engineering. So bio, like biology is tissue. 19 Mostly what we look at is human tissue. And mechanics is 20 the branch of physics that looks at how forces act upon 21 objects. 22 So if we marry those two together, biomechanics 23 looks at how forces act on human tissue and can cause 24 injury. 25 The definition that you gave is for occupant</p>	<p style="text-align: right;">Page 9</p> <p>1 looking at me right now, so for what that's worth. 2 THE WITNESS: I am now, yes. 3 MS. CANNELLA: Okay. Great. 4 BY MS. CANNELLA: 5 Q. Would you consider yourself a scientist, 6 Dr. Gwin? 7 A. Yes. 8 Q. And do you experiments as part of your work? 9 A. Yes. 10 Q. What is the control in the context of an 11 experiment? 12 A. Someone who is not being subjected to whatever 13 the experiment is about. So like a drug study, the 14 control does not get drug, and the subject does get the 15 drug. 16 Q. So the control would be basically the normal 17 condition? 18 MR. HILL: Object to form. 19 THE WITNESS: Well, it's the one who's not 20 getting the experimental thing, whether it's a drug or 21 a -- whatever the thing we're testing. 22 BY MS. CANNELLA: 23 Q. And what's a variable? 24 A. Something that can change. 25 Q. And there's two kinds of variables, right,</p>

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<p style="text-align: right;">Page 10</p> <p>1 independent and dependant variables?</p> <p>2 A. Probably, yes.</p> <p>3 Q. And independent is a variable that the</p> <p>4 researcher changes?</p> <p>5 A. Yes.</p> <p>6 Q. And the dependant variable, are those variables</p> <p>7 that change as a result of the independent variable;</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Do you agree that a good experiment</p> <p>11 should change just one variable?</p> <p>12 A. Not always. I mean ideally, sure, but there are</p> <p>13 almost never can you only do one thing.</p> <p>14 Q. The gold standard would be to just change one</p> <p>15 variable?</p> <p>16 MR. HILL: Object to form.</p> <p>17 THE WITNESS: I don't know if it's the gold</p> <p>18 standard, but it would be the ideal world, Nirvana.</p> <p>19 BY MS. CANNELLA:</p> <p>20 Q. And if you change just one variable from the</p> <p>21 control, then you can really isolate the effects of that</p> <p>22 one variable; do you agree with that?</p> <p>23 A. Yes. That's why it would be Nirvana or ideal.</p> <p>24 Q. Okay. And do you agree that the more variables a</p> <p>25 researcher changes, the more difficult it is to isolate</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Sure, yes.</p> <p>2 Q. And what would those be?</p> <p>3 A. Oh, my gosh. So independent variables are</p> <p>4 things that we can create or we can set up, and those</p> <p>5 would be things like -- this is not an exhaustive list --</p> <p>6 things like both -- each vehicle's speed, angles of the</p> <p>7 vehicle, offset of the vehicles, weights of the vehicles,</p> <p>8 whether there's a lift kit or we're looking at OE,</p> <p>9 original equipment. I'm sure I'm missing things, but</p> <p>10 those are some great examples.</p> <p>11 Q. And my question is about the crash test that</p> <p>12 Exponent did in this case. So there were at least two</p> <p>13 independent variables in the crash test that were</p> <p>14 different than the control or the crash that actually</p> <p>15 happened; correct? The lift was different; correct?</p> <p>16 A. Right. We were testing whether OE equipment --</p> <p>17 well, original equipment, i.e. no lift kit, would result</p> <p>18 in similar deformation of the target vehicle.</p> <p>19 Q. Right. So the lift kit was -- the height of the</p> <p>20 vehicle was changed from the original crash, from the</p> <p>21 subject crash; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And then the presence of cargo was also</p> <p>24 different in the Exponent test than the subject crash;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 11</p> <p>1 which of those variables caused the changed condition in</p> <p>2 test subject?</p> <p>3 A. Yes, in general.</p> <p>4 Q. And can you think of a way to use a control to</p> <p>5 design a set of crashes that would be able to isolate the</p> <p>6 amount of crush that is due just to a lift in a crash?</p> <p>7 A. Can I think of a test? Is that what the first</p> <p>8 part of the question was?</p> <p>9 Q. Yes. Can you think of a way to use a control to</p> <p>10 design a set of crash tests that would be able to isolate</p> <p>11 the amount of crush that is due just to the lift?</p> <p>12 A. Yes.</p> <p>13 Q. And what is that?</p> <p>14 A. Well, you -- we would take a lifted truck, which</p> <p>15 is what you're talking about, about a lift, a lift kit,</p> <p>16 so we would take a lifted truck and do a crash, or we</p> <p>17 would look at a crash with a lifted truck that already</p> <p>18 happened. And then we would take a non-lifted truck,</p> <p>19 sort of an OEM, or original equipment, OE truck, and do</p> <p>20 essentially the same crash.</p> <p>21 So with the same two vehicle, same vehicle</p> <p>22 lineup, same speeds, et cetera, and then compare the two.</p> <p>23 Q. Okay. And do you agree there were at least two</p> <p>24 independent variables in the crash test that Exponent did</p> <p>25 in this case?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes. Because the only people who could tell us</p> <p>2 exactly what cargo and where it was didn't know, so</p> <p>3 that's an important part of science is not guessing. And</p> <p>4 so if we were to try to put cargo in the test vehicle at</p> <p>5 Exponent, then we would be guessing, and so we can't do</p> <p>6 that.</p> <p>7 Q. Okay. So it's important not to guess in</p> <p>8 science; correct?</p> <p>9 A. Right, yeah.</p> <p>10 Q. And the presence of cargo and the lift are two</p> <p>11 things that were different from the subject crash and</p> <p>12 Exponent crash; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And then there was also a difference in whether</p> <p>15 there was a car seat in the Exponent test; correct?</p> <p>16 A. Correct. A child safety seat, I would call it,</p> <p>17 but yes.</p> <p>18 Q. And then there was a difference in whether there</p> <p>19 were actually dummies placed in the Exponent test;</p> <p>20 correct?</p> <p>21 A. Correct. And that would be different than the</p> <p>22 subject crash anyway because we wouldn't have live humans</p> <p>23 in this crash test. So you're right, though, there were</p> <p>24 no dummies.</p> <p>25 Q. Could you do a test where you put -- strike</p>

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<p style="text-align: right;">Page 14</p> <p>1 that.</p> <p>2 Could you take the test that Exponent did and</p> <p>3 then run it again, but without the lift and use those two</p> <p>4 tests to isolate how much crush was due to the lift?</p> <p>5 MR. HILL: Object to form.</p> <p>6 THE WITNESS: Yes, of course, we could. Sure.</p> <p>7 BY MS. CANNELLA:</p> <p>8 Q. Is it your opinion that the movement of</p> <p>9 Cohen Bryson during collision would have been the same</p> <p>10 regardless of whether he was hit by a stock or lifted</p> <p>11 F250?</p> <p>12 A. In general, yes, that is my opinion. The laws</p> <p>13 of physics apply whether we're struck by a lifted truck</p> <p>14 or a stock truck. And so his movement would have been</p> <p>15 the same, in that in both case he would have been pushed</p> <p>16 forward by the rear intruding structures including his</p> <p>17 child safety seat, as well as the Ford seat, as well as</p> <p>18 all the cargo area structures, as well as, unfortunately,</p> <p>19 the Ford F250 front structures.</p> <p>20 And then as the kinematic part or the inertial</p> <p>21 part of the crash began, he would move somewhat backward</p> <p>22 relative to the interior of the vehicle and then rebound</p> <p>23 forward limited, of course, by his five-point harness,</p> <p>24 and that would be the same whether the striking vehicle</p> <p>25 was lifted or stock.</p>	<p style="text-align: right;">Page 16</p> <p>1 anything. So did I? No, I did not.</p> <p>2 Q. What is the difference between what you're</p> <p>3 saying and using, for example, an instrumented dummy to</p> <p>4 measure force?</p> <p>5 A. So instrumented dummies have some force gauges,</p> <p>6 but they're in, like, the lower spine and the upper --</p> <p>7 and the cervical spine, which is not at all what we're</p> <p>8 here to talk about today.</p> <p>9 So regarding, like, head injury, which certainly</p> <p>10 is applicable to what we're here to talk about today,</p> <p>11 what's measured are accelerations and sometimes in crash</p> <p>12 testing angular velocities.</p> <p>13 Q. Okay. So the accelerations and forces and</p> <p>14 angular velocities are different from each other?</p> <p>15 A. Do you mean accelerations are different from</p> <p>16 forces which are different from angular velocities? Yes.</p> <p>17 Q. Okay. Did you do anything to measure the injury</p> <p>18 scores?</p> <p>19 A. Well, that would take into account had</p> <p>20 accelerations and angular rates and angular velocities --</p> <p>21 I'm sorry, angular velocities and angular accelerations,</p> <p>22 which we didn't measure in our crash test, and we also</p> <p>23 don't have measured in the control, which is the subject</p> <p>24 crash.</p> <p>25 Q. You testified earlier, though, that the forces</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. Would the forces on his body be the same</p> <p>2 regardless of whether he was hit by a stock or lifted</p> <p>3 F250?</p> <p>4 A. In general, yes. Would there have been the</p> <p>5 exact number of pounds? I don't know. There's no way to</p> <p>6 know that really or even test that, but we do know that</p> <p>7 regardless of whether the truck, the striking vehicle</p> <p>8 truck was lifted or stock, the intruding structures</p> <p>9 including his seat and child safety seat would move</p> <p>10 forward, and he would have similar forces and similar</p> <p>11 injury mechanisms between the two situations.</p> <p>12 Q. And what testing are used to support that</p> <p>13 opinion?</p> <p>14 A. The Exponent testing, and -- not testing, but</p> <p>15 the actual crash. The laws of physics, literature</p> <p>16 regarding rear crashes including crash tests, rear crash</p> <p>17 tests, et cetera.</p> <p>18 Q. Did you do anything to measure the amount of</p> <p>19 force in the exponent crash test that -- the amount of</p> <p>20 force on a child like Cohen?</p> <p>21 A. Measuring force on a person isn't something</p> <p>22 that's done or really even possible to be useful.</p> <p>23 Certainly, you can put a force gauge on anything and</p> <p>24 measure it, but even the federal government in vehicular</p> <p>25 crash testing doesn't use forces because they don't mean</p>	<p style="text-align: right;">Page 17</p> <p>1 would have been the same on Cohen regardless of the lift</p> <p>2 or using a stock F250.</p> <p>3 Would the accelerations on Cohen have been the</p> <p>4 same regardless of whether a stock F250 hit him or a</p> <p>5 lifted F250?</p> <p>6 A. Same answer really, in that would it be the</p> <p>7 exact same number of Gs of acceleration? I don't know.</p> <p>8 But it certainly would have been similar and injurious,</p> <p>9 you know, above IARVs, which are injury criteria, due to</p> <p>10 the deformation of the vehicle, the Ford Escape vehicle.</p> <p>11 Q. Do you agree you could have measured</p> <p>12 accelerations on a Hybrid III child dummy in the second</p> <p>13 row in the Exponent crash test?</p> <p>14 A. Yes. But, like I said, we would have been</p> <p>15 guessing because we would have had to load up the cargo</p> <p>16 area exactly as it was in the subject vehicle, which the</p> <p>17 only people who could possible know, don't know. So we</p> <p>18 would be guessing as to where everything was and what all</p> <p>19 was back there in the cargo area. So sure, we could</p> <p>20 have.</p> <p>21 The other thing is Cohen Bryson was not the same</p> <p>22 age or height and weight as a standard child Hybrid III</p> <p>23 dummy, and therefore we would have had to guess a bit</p> <p>24 there -- not guess, but not be exactly correct and using</p> <p>25 independent variables as we discussed earlier.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. Okay. A couple of questions on that. Have you 2 ever done a crash test with an instrumented Hybrid III 3 dummy? 4 A. Yes. 5 Q. And how often does the Hybrid III dummy exactly 6 match the person who was in the wreck? 7 A. Oh, maybe half the time. 8 Q. Okay. Second question is, it's your opinion, as 9 I understand it, and correct me if I'm wrong, that the 10 cargo would have increased the forward movement of the 11 second row in the crash test if it had been added enough 12 to cause Cohen's death; correct? 13 A. Let me clarify. 14 Q. Okay. 15 A. So in our test at Exponent, had we known, i.e. 16 had the Brysons known exactly what was in the cargo area 17 in the subject vehicle at the time of the crash and 18 exactly where it was, had we recreated that in our test 19 at Exponent, would there have been more deformation or 20 more forward movement of the Row 2 seat backs, and 21 therefore had Cohen Bryson been in our Exponent crash 22 test, would he still have suffered his fatal injuries in 23 our crash test, I think that's what you're asking, and 24 the answer is yes. 25 Q. Would he have suffered the same injuries, fatal</p>	<p style="text-align: right;">Page 20</p> <p>1 of which match Cohen Bryson, in the spot, in the No. 4 2 position, and ran the Exponent test -- an instrumented 3 child dummy, and ran the Exponent test, we would have had 4 a really good idea, is what you're saying, of whether he 5 would have had fatal injuries? 6 BY MS. CANNELLA: 7 Q. Correct. 8 A. We would have had numbers, but we already know 9 that based on the movement and deformation of the rear 10 structures of the Escape. 11 Q. Well, you wouldn't have just had numbers, you 12 would have had numbers that correspond to injury values; 13 correct? 14 A. Right, right, exactly. We would have had 15 numbers. 16 Q. And that's -- sorry. I didn't mean to interrupt 17 you. 18 That's what NHTSA and car manufacturers use to 19 determine whether someone is likely to survive a crash; 20 correct? 21 A. In frontal and side crashes, yes, that's what 22 they use. 23 Q. Okay. The -- you said something else I wanted 24 to ask you about, and I think I've lost it now. 25 Oh, it's your opinion, then, that you can tell</p>
<p style="text-align: right;">Page 19</p> <p>1 injuries, in the Exponent crash test without the cargo? 2 A. Still likely because of the amount of 3 deformation that we can see on the -- mostly on the 4 videos of the crash test. So even so, yes, but there 5 would have been more deformation forward had all the 6 stuff been in the cargo area. 7 Q. How do you know that he would have died in the 8 Exponent crash test, even without the cargo? 9 A. Because I have seen the crash test results 10 including the videos that show the deformation and 11 forward movement of the Row 2 seat backs, and it's very 12 violent, it's very fast, it's very -- it's a lot of 13 movement, and so all of that structure would have been 14 pushed right into the back of Master Bryson. 15 Q. So then the cargo is irrelevant? 16 A. Well, not really irrelevant, like let's not talk 17 about it at all because it was part of the subject crash. 18 Q. And isn't it true that if the Exponent crash 19 test had included a Hybrid III instrumented dummy in the 20 same place that Cohen was, then we would have a very good 21 idea of whether he would have survived, but for the 22 cargo, regardless of the cargo? 23 MR. HILL: Object to form. 24 THE WITNESS: So in other words, had we put a 25 dummy, either an infant or three-year-old dummy, neither</p>	<p style="text-align: right;">Page 21</p> <p>1 that Cohen would have died in this crash just by looking 2 at the crash test videos and what's -- and the violence, 3 you said, of the movement inside the car; correct? 4 A. I mean, it's not just watching the videos. 5 That's the most obvious way to see how much movement 6 there is and how violent it is, et cetera, but based on 7 my experience in injuries, biomechanics, et cetera, and 8 all the other crash tests that I've seen and performed 9 and all the literature regarding real-world crashes as 10 well as crash tests, then I can see that that would have 11 resulted also in catastrophic, i.e. fatal injuries had 12 Master Bryson been in the Exponent test. 13 Q. Is there any NHTSA procedure that allows someone 14 to decide whether a crash is survivable or someone's 15 likely to get an injury based on looking at the crash 16 tests without any dummy data at all? 17 A. A NHTSA procedure, no. But they also don't -- 18 there is no NHTSA procedure for injuries in rear crashes 19 at all. 20 Q. Is there any IIHS procedure that allows someone 21 to decide the likelihood of death or injury based on 22 looking at crash tests with no instrumented dummies at 23 all? 24 A. Same answer as the NHTSA. 25 Q. In your experience in the automotive industry,</p>



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<p style="text-align: right;">Page 22</p> <p>1 did Ford ever have a crash test procedure where a person 2 could just look at the crash test and say whether there's 3 likely to be significant injury or death? 4 A. I didn't work in crash testing at all at Ford, 5 so I have no idea. 6 Q. Your disclosure says you will testify regarding 7 all aspects of the exemplar crash testing; is that 8 correct? 9 A. All as it pertains to kinematics and 10 biomechanics and injury causation. There are others, 11 including Mr. Grimes and Mr. Crosby, who will talk about 12 their parts of it. 13 Q. And can you talk about the setup of the crash 14 test at all, or is that left to somebody else? 15 A. In terms of biomechanics and injury caution and 16 kinematics, yes, but not, you know, how the crash testing 17 data collectors work and things like that. That would be 18 others. 19 Q. Did you help design the crash that Exponent did? 20 A. In terms of biomechanics and injury caution, 21 yes, but not in terms of speeds and vehicle lineups and 22 things like that. That was others. 23 Q. Okay. And how did that -- how did you give your 24 contributions to the design setup. 25 A. We had calls before the testing with the group</p>	<p style="text-align: right;">Page 24</p> <p>1 A. No. We all contributed. Ultimately, the actual 2 doing of it fell to Mr. Crosby, but he wasn't like the 3 one that made final decisions or anything like that. We 4 all gave our input, but ultimately he was the boots on 5 the ground that made it happen. 6 Q. And did the lawyers contribute to the decisions 7 about how to set up the test at all? 8 A. No. That's an engineering expert role. 9 Q. Why didn't you or Exponent or any other expert 10 want to put a car seat in the vehicle during the crash 11 test? 12 A. Well, like we talked about, the child safety 13 seat was deformed by the rear structures including likely 14 the cargo area -- what's a good word for stuff that 15 doesn't sound so -- equipment, I guess, the items that 16 were in the cargo area likely contributed to the 17 deformation of the child safety seat, which likely 18 interacted with Master Bryson's head and caused his 19 catastrophic injuries. 20 So putting a child safety seat in there without 21 the cargo area items was basically same reason as the 22 cargo area items. Since we don't know exactly what or 23 where any of those items were, putting a child safety 24 seat in there likely wouldn't change anything -- well, 25 let me rephrase that -- likely wouldn't -- what's the</p>
<p style="text-align: right;">Page 23</p> <p>1 where everybody gave their input about their piece, 2 reconstruction, et cetera, and I gave my opinions at that 3 time regarding injury caution, kinematics, and 4 biomechanics. 5 Q. And what were those opinions at the time? 6 A. That likely we would find out, but likely based 7 on what I understood others' opinions to be, we would 8 still get lots of deformation of the rear structures even 9 without the lift kit, which would be injurious, 10 catastrophically injurious, and opinions about heights 11 and weights of occupants in the vehicles -- vehicle, the 12 Ford Escape, things like that. 13 Q. Okay. And who were on those calls and a part of 14 those discussions in deciding the test setup? 15 A. Mr. Grimes, Mr. Crosby, and various lawyers. 16 Mr. Hill was certainly on some of them. Ms. Ferguson was 17 certainly on some of them. 18 Q. Do you remember how many conversations you had 19 about the test setup? 20 A. I don't. 21 Q. Was there somebody who was, like, driving the 22 car on this -- well, that's a bad analogy. 23 Is there somebody who was in charge of the test 24 setup, and everybody else was contributing, like kind of 25 a primary person who was in charge of deciding?</p>	<p style="text-align: right;">Page 25</p> <p>1 words I'm searching for -- likely wouldn't be applicable 2 in our crash test because we didn't have the cargo area 3 items back there to interact with the seat, the Row 2 4 seat and the child safety seat. 5 Q. Do you agree that the child seat helped hold up 6 the second row in the subject crash? 7 A. Helped hold it up? 8 Q. Correct. So the child seat was pushing back 9 against the second row during the subject crash? 10 A. Somewhat. 11 Q. And I guess I -- I'm not -- I understand why -- 12 I think I understand why you didn't put the cargo in. 13 You didn't put the cargo in because you didn't know where 14 it was; correct? 15 A. Right. I mean, the only two people who could, 16 didn't, so we certainly couldn't know. 17 Q. Okay. And would the deformation to the second 18 row seat change based on where the cargo was in the 19 trunk, there again? 20 A. Potentially. That's exactly it. So for us to 21 guess, we might be adding a guessed, g-u-e-s-s-e-d, not 22 guest like a visitor, guessed variable. 23 Q. Is it possible that -- let me strike that. 24 Would the cargo all need to be stacked on top of 25 each other to create the deformation that we see in the</p>



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<p style="text-align: right;">Page 26</p> <p>1 subject crash in your opinion?</p> <p>2 A. I don't know. I don't know exactly how it was</p> <p>3 all in there. I don't know.</p> <p>4 Q. But it is your opinion that if you put the cargo</p> <p>5 in there, then it will cause the deformation of the</p> <p>6 second row to look like it did in the Bryson's crash;</p> <p>7 correct?</p> <p>8 MR. HILL: Object to the form. Go ahead.</p> <p>9 THE WITNESS: I guess I will agree, but say --</p> <p>10 yeah, I'll just agree. Yes.</p> <p>11 BY MS. CANNELLA:</p> <p>12 Q. How is it not guessing that if you put the cargo</p> <p>13 back there, that it will cause the same deformation?</p> <p>14 A. Because the cargo takes up space. I mean, we</p> <p>15 know that the F250 got all the way beyond the C pillar in</p> <p>16 the Escape, even with no cargo in the area. So if we add</p> <p>17 cargo items, it's just a space issue. It's not guessing.</p> <p>18 It's just space is taken up and therefore that would push</p> <p>19 everything in front of the cargo items forward more than</p> <p>20 they already were.</p> <p>21 Q. All right. But it would push them forward more</p> <p>22 -- like the amount of how much it would push them forward</p> <p>23 depends on where you put the items; right?</p> <p>24 A. Right. And that would be the guessing part,</p> <p>25 about where they were.</p>	<p style="text-align: right;">Page 28</p> <p>1 items in the cargo area on the subject vehicle, and the</p> <p>2 shop vac drum is just flattened.</p> <p>3 So we know they're back there. We just don't</p> <p>4 know exactly where, but either way, they definitely</p> <p>5 interacted with the Row 2 seat, and there's evidence on</p> <p>6 the back of the Row 2 seat of this interaction on the</p> <p>7 subject vehicle as well to show that.</p> <p>8 Q. Have you ever put a dummy in a second row, an</p> <p>9 instrumented dummy, and taken measurements during a crash</p> <p>10 test?</p> <p>11 A. I don't think I ever have on a test that I've</p> <p>12 done or been involved in.</p> <p>13 Q. Would the Hybrid III child dummy in a car seat</p> <p>14 in the second row in an Exponent test give you useful</p> <p>15 data in this case?</p> <p>16 A. Maybe, but not likely because the dummy would be</p> <p>17 different. I mean, which dummy is the first question.</p> <p>18 And they're very -- as you know, child dummies are very</p> <p>19 different between the ages, if you will. So maybe.</p> <p>20 Q. And why did you attend the crash testing in this</p> <p>21 case?</p> <p>22 A. I typically attend crash testing that I'm</p> <p>23 helping to design because there are always questions at</p> <p>24 the last minute, A; and, B, because it's really nice to</p> <p>25 see the whole setup and make sure that everything's been</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Right. But we're still -- we're still</p> <p>2 guessing -- you're still guessing, though, because you</p> <p>3 don't know where the items were, so you don't know if</p> <p>4 they actually would push the car -- the second row</p> <p>5 forward in the same way?</p> <p>6 A. In the same way? I mean, if they were in the</p> <p>7 there the same way as they were in the subject vehicle,</p> <p>8 which we will never know, no one ever will ever know, and</p> <p>9 therefore we would be guessing if we tried to recreate</p> <p>10 that, it will push the seat forward more than if they</p> <p>11 weren't there.</p> <p>12 The cargo that we do know was in -- was in that</p> <p>13 area was a stroller -- I know you know this, but a</p> <p>14 stroller, a shop vac. I mean, none of these were just</p> <p>15 tiny things. But, sure, if we threw, you know, pens and,</p> <p>16 you know, water bottles on the floor -- and I sound</p> <p>17 facetious, but I'm trying to make the point that, yeah,</p> <p>18 that wouldn't have anything to do with it, or if we took</p> <p>19 something and put it all the way to the right, but</p> <p>20 something small, it would have no interaction, and it had</p> <p>21 no interaction with the left portion of the Row 2 seat,</p> <p>22 then, right, it wouldn't change anything.</p> <p>23 But we know that the actual you cargo interacted</p> <p>24 with the Row 2 seats including the left portion of the</p> <p>25 rear -- Row 2 seats because there's pieces of the broken</p>	<p style="text-align: right;">Page 29</p> <p>1 communicated right.</p> <p>2 Mr. Crosby is really good at what he does, so,</p> <p>3 knock on wood, I've never found anything at the last</p> <p>4 minute where I said, Charlie, that's not what I said at</p> <p>5 all. But I always like to be there just to lay eyes on</p> <p>6 the entire setup before it runs.</p> <p>7 Q. Okay. I want to -- let me share my screen. I</p> <p>8 want to look at your report real quick.</p> <p>9 Okay. I've marked it as Plaintiff's Exhibit 29</p> <p>10 [sic]. Can you see that there? I think you have it on</p> <p>11 your computer as well?</p> <p>12 A. Yes.</p> <p>13 Q. All right. So it's Plaintiff's Exhibit 25. I</p> <p>14 hope I said that. Page 10 of your report talks about the</p> <p>15 crash test. Can you see that there?</p> <p>16 A. I do.</p> <p>17 Q. Okay. Is everything that you rely on about the</p> <p>18 crash test in this paragraph, or is there other things</p> <p>19 that you're relying on?</p> <p>20 A. I rely on the entire test, so all the videos,</p> <p>21 all the photos, the report, and that's why I said at the</p> <p>22 last, "Please refer to the test report for further</p> <p>23 details," so there's videos, photos, et cetera.</p> <p>24 Q. Were any G measurements taken during the crash</p> <p>25 testing?</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. Yes.</p> <p>2 Q. And what were the results of those?</p> <p>3 A. I'd have to look at the report, I don't remember</p> <p>4 the exact numbers. I can take a look if you would like</p> <p>5 me to.</p> <p>6 Q. That would be great. Thank you.</p> <p>7 A. Okay. So I'm starting on page 95 of the</p> <p>8 Exponent report. The longitudinal acceleration of the</p> <p>9 left racker panel at the B pillar of the Ford F250 maxed</p> <p>10 out at about negative 16 and a half Gs. The lateral</p> <p>11 acceleration of the left racker panel at the B pillar of</p> <p>12 the Ford F250 maxed out about positive and negative 2 Gs.</p> <p>13 Q. I'm actually -- I'll stop you and save you some</p> <p>14 time. I'm only looking for the Escape.</p> <p>15 A. Okay. I'm on page 119 of the Exponent report.</p> <p>16 The longitudinal acceleration of the left racker panel at</p> <p>17 the B pillar of the Ford Escape maxed out about 25 Gs.</p> <p>18 The lateral acceleration of the left racker at the</p> <p>19 B pillar of the Ford Escape maxed out about positive</p> <p>20 9 Gs. And the vertical acceleration of the left rocker</p> <p>21 at the B pillar of the Escape maxed out about 16 Gs</p> <p>22 positive and negative 11 and a half Gs.</p> <p>23 Q. Okay.</p> <p>24 A. The resultant acceleration at the left racker --</p> <p>25 of the left racker at the B pillar of the Escape was</p>	<p style="text-align: right;">Page 32</p> <p>1 because I know as a physician and as a biomechanic what</p> <p>2 sorts of injuries we're going to expect with the</p> <p>3 deformation of the rear structures including the seat,</p> <p>4 the Row 2 seat, of the Escape in that position.</p> <p>5 Q. Okay. But my question is specific, that we</p> <p>6 don't know the Gs that Cohen would have experienced</p> <p>7 because we don't have the dummy in the back seat of a</p> <p>8 crash test; correct?</p> <p>9 A. Right, exactly. And we don't have the cargo for</p> <p>10 the reasons we've talked about already that I won't</p> <p>11 reiterate. So, right, I would have a number, but it</p> <p>12 wouldn't really change anything because we wouldn't be</p> <p>13 able to compare it to the control because we don't have a</p> <p>14 number for the actual Cohen Bryson in the actual crash.</p> <p>15 So then we wouldn't have anything to compare it to.</p> <p>16 So we talked first in this deposition about</p> <p>17 controls and then independent variables, and so we</p> <p>18 wouldn't have a control to compare it to.</p> <p>19 But we have our test to know that this is a</p> <p>20 catastrophic crash for a person in that position,</p> <p>21 unfortunately, regardless of whether there's a lift kit</p> <p>22 or not.</p> <p>23 Q. And we don't have the Gs for the front occupants</p> <p>24 because there's no Hybrid dummies in the front seat;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 31</p> <p>1 about 25 Gs.</p> <p>2 Q. Let me ask you this, and I realize you might not</p> <p>3 have finished telling me all these things, but what I</p> <p>4 really would like to know is are these survivable forces?</p> <p>5 A. So of a rocker panel, I mean, no one's ever got</p> <p>6 their body parts on the rocker panel, so there's no</p> <p>7 number -- there's no answer to that question.</p> <p>8 Q. Do you know what the Gs were or would be on</p> <p>9 occupants in the vehicle in the Exponent crash test?</p> <p>10 A. It depends on the occupant, but for the -- for</p> <p>11 Cohen Bryson if he had been in our crash test, his</p> <p>12 accelerations are very high because he's in the crush</p> <p>13 zone. And, basically, the 50 approximately mile-an-hour</p> <p>14 truck with the cargo area and rear structures and his</p> <p>15 seat are pushing against him, and so those numbers are</p> <p>16 extremely high.</p> <p>17 The front occupants, their numbers are much</p> <p>18 lower. We know in the subject crash -- no, we don't.</p> <p>19 Never mind. Strike that last half of a sentence.</p> <p>20 Q. Okay. What I'm -- so a few questions on that.</p> <p>21 Number one, we don't know what the Gs would be on Cohen</p> <p>22 in the crash test because there was no instrumented dummy</p> <p>23 placed there; correct?</p> <p>24 A. Right. Like I said before, I could have a</p> <p>25 number if we did that, but we don't really need a number</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Right, correct. And again, it wouldn't really</p> <p>2 mean anything if we did have those numbers because we</p> <p>3 don't have the controls and because those numbers would</p> <p>4 be much lower than in the crash zone.</p> <p>5 Q. Is it your testimony that you can't use crash</p> <p>6 test dummy numbers in -- to help you with your analysis</p> <p>7 unless you have the G numbers and the injury score</p> <p>8 numbers from the subject test? I mean, that's never the</p> <p>9 case; correct?</p> <p>10 A. It is almost never the case, but no, that's not</p> <p>11 what I'm testifying to. I'm saying that that is one</p> <p>12 reason that it wouldn't matter. I'm not saying that I</p> <p>13 can't use those numbers if we had them. The problem is</p> <p>14 those numbers would be based on a guess about the cargo.</p> <p>15 Q. Okay. So kind of going back to what I was</p> <p>16 saying, it's possible to collect information about Gs on</p> <p>17 a front occupant and a back occupant in the Exponent</p> <p>18 crash test; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And that was not done here; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And do you agree that an instrumented</p> <p>23 dummy would have told you the forces on Cohen's head</p> <p>24 during the crash if the F250 had not been lifted?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q. Okay. And the G values that we do have from the 2 crash test are not the level that would cause someone a 3 fatal injury absent some impact to them; correct? 4 A. So just -- you know, is 25 Gs capable of 5 causing a catastrophic brain injury without impact? I 6 mean, anything's possible, but no, that would not rise to 7 the level of a reasonable degree of certainty. 8 Q. And it's your opinion that you could put items 9 in the trunk and run the crash test, but because you 10 don't know where they were, you didn't? 11 A. Where they were and what all they were. We know 12 of some, but we don't know what was back there, and we 13 don't know where everything was back there. 14 Q. Okay. I want to show you a picture from the 15 Exponent crash test that I've marked as Plaintiff's 16 Exhibit 33. Can you see that? That's not helpful. 17 That's not what I wanted. That's the whole thing. One 18 second. 19 Seems that I've marked this as Plaintiff's 20 Exhibit 32. Do you see that picture? 21 A. I do, yes. 22 Q. Is it your opinion that this amount of 23 deformation was enough to cause a fatal injury to Cohen? 24 A. Yes. We're looking at a static photo here, so 25 in this crash -- you know, in the crash that caused this</p>	<p style="text-align: right;">Page 36</p> <p>1 would have been deformed forward, rotate the left portion 2 would have been rotated counterclockwise when viewed from 3 above just like it is here, but there would have been 4 more forward deformation of those two seat backs with -- 5 Q. How much more? 6 A. The -- cargo in place because we know the cargo 7 was in place in the actual crash. 8 That would be a guess. You asked me how much 9 more, and that would be a guess because we don't, again, 10 know exactly what was back there and where everything was 11 back there. 12 Q. And so again, Plaintiff's Exhibit 32 is not what 13 would have happened in our crash if the F250 had not been 14 lifted? 15 MR. HILL: Object to the form. 16 BY MS. CANNELLA: 17 Q. It would look different? 18 A. It would be even more deformed, but yes, it does 19 show the splitting of the back two seats because it's a 20 60/40 split. It does show counterclockwise rotation of 21 the left seat back. It does show forward tilting of the 22 seat back. So yes, in way more ways than no. The only 23 no is that it would be more deformed. 24 Q. And where would it be more deformed? 25 A. The whole seat -- both seat backs.</p>
<p style="text-align: right;">Page 35</p> <p>1 deformation, yes. 2 Q. And do you agree that the Exponent crash test is 3 not intended to represent what would have happened in our 4 crash, but for the lift? 5 MR. HILL: Object to form. 6 THE WITNESS: I'm not sure exactly what you're 7 asking me. 8 BY MS. CANNELLA: 9 Q. Well, do you agree that the crash test that 10 Exponent did doesn't represent what would have happened 11 in our crash, but for the lift? 12 MR. HILL: Object to the form. 13 THE WITNESS: I guess it's the "but for the 14 lift." I think I might know what you mean, but I don't 15 want to guess, so I'm not sure how to answer that 16 question. 17 BY MS. CANNELLA: 18 Q. Okay. I'll try again. The picture that I just 19 showed you, Plaintiff's Exhibit 32 -- I'll pull it up 20 again. The crash test -- well, strike that. 21 Plaintiff's Exhibit 32 in your opinion does not 22 look like what the second row seat would have looked like 23 in the subject crash had the F250 not been lifted? 24 MR. HILL: Object to the form. 25 THE WITNESS: In general, it does, yes. It</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. No matter where you put the cargo, both seat 2 backs would be more deformed forward; correct? 3 A. No. As we talked about before, it's possible 4 that you could jam everything maybe all the way to the 5 right side of the vehicle, and then not get any 6 deformation of that left seat back, but that's not what 7 happened in either case, so there's no point in talking 8 about that. 9 But if the cargo had been exactly the same as it 10 was in the actual crash, which we will never know what 11 that was, then we would have even more forward 12 deformation of the Row 2 seat back, even without a lift 13 kit on the F250. 14 Q. And can you tell the Court how many more inches 15 of forward deformation there would have been? 16 A. No. I cannot for the reasons that we've already 17 discussed. 18 Q. Looking at Plaintiff's Exhibit 32, what in this 19 picture causes the impact to Cohen that would kill him? 20 A. What caused the impact to Master Bryson is the 21 deformed child safety seat with the Row 2 seat behind it, 22 which is being deformed in interacting with the child 23 seat and all the cargo behind it and the cargo -- the 24 lift gate behind it and the Ford F250 behind it. 25 Q. Can you circle -- well, back up.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Your report says that his injury has to be  2 caused by something two inches or less; correct?  3 A. Right. A diameter, yes, because he has a  4 depressed skull fracture.  5 Q. So can you circle on Plaintiff's Exhibit 32 the  6 two-inch or less item that would cause the skull  7 fracture?  8 A. No. It was the child seat which was interacting  9 with the belt guide for the No. 5 position with all the  10 other things stacked up behind it that I talked about a  11 minute ago.  12 Q. Which belt guide are you talking about? Can you  13 see it on this picture?  14 A. Yes.  15 Q. Okay. Can you circle it?  16 A. Maybe. I'm trying to remember how to do it, now  17 view options, annotate.  18 Q. Okay. So the belt guide that you've just  19 circled is that black piece of plastic that's coming out  20 of the second row seat?  21 A. Yes.  22 Q. Okay. And it's your testimony that that is the  23 two-inch or less diameter piece this caused the focal  24 injury that broke his skull; correct?  25 A. No.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Striking him?  2 A. I'm not aware of any airborne or flying objects,  3 but sure, in theory, if anything was flying through the  4 air behind him, he had a child safety seat behind him  5 that may have interfered with that, those hypothetical  6 items.  7 Q. Did you look at any testing of the car seat that  8 was used in this case?  9 A. Any what kind of testing?  10 Q. Any testing, product safety testing?  11 A. I'm sure I have for other cases, but, FYI, those  12 are all frontal and maybe side, certainly no rear crashes  13 that I'm aware of.  14 Q. So you're not relying on any testing of the car  15 seat in this case for your opinions; correct?  16 A. Correct.  17 Q. And you didn't consider any for your opinions?  18 A. Right. They're inapplicable.  19 Q. Well, did you ask for any testing from the car  20 seat manufacturer?  21 A. No. Because I know what they run from other  22 cases, and it would be inapplicable to this case.  23 Q. Do they run any materials durability tests?  24 A. Yeah, probably.  25 Q. Did you consider any material durability testing</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Well, I'll rephrase. It's that piece that you  2 circled in blue that hit the car seat and then that force  3 got translated to his skull; correct?  4 A. Yes. But also it deformed the child safety  5 seat, not just transmitted force.  6 Q. All right. I'll take a -- oh, did I mess it up?  7 I probably did. Oh, well. We got it on the video.  8 All right. Do you agree that the kinematics in  9 an offset crash versus a crash that's not offset are  10 different?  11 A. In general, yes.  12 Q. And do you agree that kinematics can change when  13 the amount of offset changes?  14 A. Yes.  15 Q. Does Ford do any crash testing with items in the  16 cargo area to your knowledge?  17 A. Not to my knowledge, but I'm not privy to such  18 information, so I have no idea.  19 Q. Do you agree that Cohen would have been  20 protected from objects flying towards him from the cargo  21 area by the car seat?  22 MR. HILL: Object to the form. Go ahead.  23 THE WITNESS: Flying toward him, so in other  24 words, like airborne objects?  25 BY MS. CANNELLA:</p>	<p style="text-align: right;">Page 41</p> <p>1 from the car seat manufacturer in your opinion?  2 A. No. Because this isn't about wear and tear,  3 which is what durability testing would test.  4 Q. Do you agree that car seat manufacturers know  5 there are belt guides that can be behind their car seats  6 in a crash?  7 A. I have no way of answering that.  8 Q. Well, have you seen belt guides on second row  9 seats pretty frequently?  10 A. I don't know. I've never really thought about  11 it. There are some that are seat mounted like that,  12 there are some that are roof mounted, there are some that  13 are just lap belts, so I don't know.  14 Q. Did you do any force testing of the child  15 restraint in this case to see how much force it would  16 take for the belt guide to cause a force that would go  17 through the car seat and reach Cohen and kill him?  18 MR. HILL: Object to the form. Go ahead.  19 THE WITNESS: FYI, I've never said that that  20 happened, so no.  21 BY MS. CANNELLA:  22 Q. Did you do any kind of testing to analyze the  23 effect of -- or the ability of the car seat to protect a  24 child from the kind of forces that you're talking about?  25 MR. HILL: Object to the form.</p>

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<p style="text-align: right;">Page 42</p> <p>1 THE WITNESS: Did I do any testing? No.</p> <p>2 BY MS. CANNELLA:</p> <p>3 Q. Do you know of any papers that talk about how</p> <p>4 much force a car seat will be able to protecting a child</p> <p>5 from in a rear impact?</p> <p>6 MR. HILL: Same objection.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. CANNELLA:</p> <p>9 Q. Car seats are designed to protect children in</p> <p>10 crashes; correct?</p> <p>11 A. They are, and they do a fabulous job.</p> <p>12 Q. And they do that by packaging the child inside</p> <p>13 the car seat; correct?</p> <p>14 A. I don't know if that's the word that they would</p> <p>15 use or I would use, but they protect kids in a variety of</p> <p>16 ways. One is by tethering them to the vehicle like a</p> <p>17 seat belt does, which we know is very helpful in reducing</p> <p>18 injuries. Child safety seats provide ride down so that</p> <p>19 forces are reduced, and yes, I think maybe what you mean</p> <p>20 by packaging is like side wings to protect in side</p> <p>21 impacts, et cetera.</p> <p>22 Q. And how does a car seat protect a child from a</p> <p>23 rear impact?</p> <p>24 A. Well, let's just talk about forward facing seats</p> <p>25 because that's what's applicable here, and they provide</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Perfect. Yes, that is the most recent.</p> <p>2 Q. Okay. And if you want to look at it here, we</p> <p>3 can, or if you want to look at it on your computer is</p> <p>4 fine. But can you tell me which ones were car seat</p> <p>5 cases?</p> <p>6 A. Yes. Stand by. The first one is Frost, like</p> <p>7 cold air, Kristina versus Evenflow.</p> <p>8 Q. Which page are you on?</p> <p>9 A. Oh, sorry. Page 3, about half-sh way down.</p> <p>10 Q. Okay.</p> <p>11 A. Though I've lost it now. There we go.</p> <p>12 Q. Okay.</p> <p>13 A. The next is Shelton, Kimberly versus Graco.</p> <p>14 Q. Okay. On page 4?</p> <p>15 A. Yes. And that's it.</p> <p>16 Q. Okay. And what were the facts of the Shelton</p> <p>17 case?</p> <p>18 A. Ms. Kimberly Shelton was driving a Ford Mustang,</p> <p>19 I think, and her child was in the No. 6 position in a</p> <p>20 Graco child safety seat. I don't remember what kind of</p> <p>21 seat it was or if he was -- I don't remember what kind of</p> <p>22 seat it was. I believe he was forward facing.</p> <p>23 I believe it was a frontal crash, but I don't</p> <p>24 remember for sure. And he had some -- the child had some</p> <p>25 abrasions on his face, likely from striking the No. 3</p>
<p style="text-align: right;">Page 43</p> <p>1 tethering, if you will, connecting the child to the</p> <p>2 vehicle so they're not flying around and moving up,</p> <p>3 ramping up, seat backs in rear crashes. They provide</p> <p>4 some amount of ride down mostly in rebound, but also in</p> <p>5 the initial impact. And they do provide surrounding the</p> <p>6 child on three sides, essentially, or at least their head</p> <p>7 on three sides if it's sort of an angled collision, rear</p> <p>8 collision, kind of a thing.</p> <p>9 Q. Okay. Have you served as an expert in a car</p> <p>10 seat case before?</p> <p>11 A. I have. I've been hired by child safety seat</p> <p>12 manufacturer lawyers in several cases.</p> <p>13 Q. And what were the names of those cases?</p> <p>14 A. The only way I could know for sure is to look at</p> <p>15 my testifying history, and then that would just be the</p> <p>16 ones that I've testified in.</p> <p>17 Do you want me to do that?</p> <p>18 Q. Sure. That would be great. Let me pull it up</p> <p>19 because I've marked it too, so I'll just pull it up for</p> <p>20 the record.</p> <p>21 I have previously marked Plaintiff's Exhibit 18,</p> <p>22 which is your updated testimony history. Do you see that</p> <p>23 there?</p> <p>24 A. And it starts with Hofer at the top, H-o-f-e-r?</p> <p>25 Q. Yes, ma'am.</p>	<p style="text-align: right;">Page 45</p> <p>1 seat in front of him, so that's why I think it was a</p> <p>2 frontal crash. And that's about all I remember about it.</p> <p>3 Q. Okay. And what was your opinion in the case?</p> <p>4 A. Based on the work of other experts and myself,</p> <p>5 the child was not properly restrained and was able to</p> <p>6 reach the No. 3 seat back in front of him during the</p> <p>7 crash sequence.</p> <p>8 Q. Okay.</p> <p>9 A. And his injuries were abrasion, basically, on</p> <p>10 his face, but he did not have a catastrophic brain</p> <p>11 injury.</p> <p>12 Q. Okay. How about the Kristina Frost case, what</p> <p>13 were the facts there?</p> <p>14 A. Mrs. Frost was driving a Buick. I don't</p> <p>15 remember the model. Her school-aged daughter was in the</p> <p>16 No. 4 position restrained with the vehicle seat belt.</p> <p>17 Her infant son was in the No. 6 position restrained in</p> <p>18 a -- an Evenflow child safety seat with a five-point</p> <p>19 harness. I believe he was forward facing.</p> <p>20 The vehicle caught on fire while she was</p> <p>21 driving. She pulled to the side of the road and</p> <p>22 attempted to rescue her children from the back seat and</p> <p>23 was unable to get either of her children out of the</p> <p>24 vehicle. The male child in the Evenflow seat died in the</p> <p>25 vehicle.</p>



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<p>1 Q. Okay. And so do you remember the defect alleged</p> <p>2 there?</p> <p>3 A. Yes, that the push button on the crotch strap</p> <p>4 was inaccessible or too hard to activate, and therefore</p> <p>5 she couldn't help her child out of the seat.</p> <p>6 Q. And what was your opinion in that case?</p> <p>7 A. Based on the fire, she couldn't really reach her</p> <p>8 male child to activate the button based on her injuries</p> <p>9 and his and testimony, witness testimony, and her own</p> <p>10 testimony and the fact that she also couldn't extricate</p> <p>11 her female child who was just in a -- in the vehicle</p> <p>12 restraint.</p> <p>13 Q. Okay. All right. Do you have any opinions</p> <p>14 about the car seat installation in this case?</p> <p>15 A. I do not. It seems like it was proper. I have</p> <p>16 no reason to argue that it was proper.</p> <p>17 Q. And you agree that the Brysons used the</p> <p>18 five-point harness to secure Cohen?</p> <p>19 A. Yes.</p> <p>20 Q. And the five-point harness was being used</p> <p>21 properly; correct?</p> <p>22 A. As far as I can tell, yes. I have no reason to</p> <p>23 argue with that.</p> <p>24 Q. And you agree that a forward facing positioning</p> <p>25 was appropriate under the user manual for this car seat</p>	<p>1 this world and the literature about these types of</p> <p>2 things.</p> <p>3 Q. Did you look at any testing of the Ford Escape</p> <p>4 with dummies in it to come to your opinion that the seat</p> <p>5 wouldn't have yielded much?</p> <p>6 A. I did not because there is no testing with a</p> <p>7 130-approximately-pound person.</p> <p>8 Q. Well, there's a 5 percent Hybrid III dummy;</p> <p>9 correct?</p> <p>10 A. Not in rear testing, no. They use the 50th male</p> <p>11 in rear 301 Testing.</p> <p>12 Q. Does a Hybrid III dummy, 5th percentile dummy</p> <p>13 exist?</p> <p>14 A. Female?</p> <p>15 Q. Yes.</p> <p>16 A. Yes.</p> <p>17 Q. And how much does that weigh?</p> <p>18 A. 90 pounds, I think, 87, something like that.</p> <p>19 Q. So if you put a 90 -- if you put a 5th</p> <p>20 percentile dummy in the front seat where Mrs. Bryson was,</p> <p>21 you could get an idea of how much yielding there would</p> <p>22 have been in the front seat in the Exponent crash;</p> <p>23 correct?</p> <p>24 A. Not really because the 5th female would be way</p> <p>25 too short and way too light.</p>
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<p>1 for Cohen?</p> <p>2 A. I do.</p> <p>3 Q. Did Cohen stay tethered to his car seat during</p> <p>4 the crash in your opinion?</p> <p>5 A. Yes.</p> <p>6 Q. Did his butt come up out of the seat at all?</p> <p>7 A. Likely not. I mean, he certainly had some</p> <p>8 forward movement as evidenced by the bruising on his</p> <p>9 thighs, but he stayed restrained in the child safety</p> <p>10 seat.</p> <p>11 Q. He didn't ramp up, like you talked about before?</p> <p>12 A. Correct.</p> <p>13 Q. Do you agree that dummies would have -- putting</p> <p>14 dummies in the front seats would have changed the way the</p> <p>15 front seats moved in the crash, in the crash test?</p> <p>16 A. Somewhat. The applicable one would be the</p> <p>17 driver's seat, obviously, in this case. And Mrs. Bryson</p> <p>18 was pretty tiny, so it wouldn't have changed it much.</p> <p>19 Her seat didn't yield much in the subject crash, and so I</p> <p>20 wouldn't expect it to yield much with a tiny dummy -- a</p> <p>21 light-weight dummy to match basically her weight.</p> <p>22 Q. And is your testimony that this seat wouldn't</p> <p>23 have yielded much with a light dummy based on any</p> <p>24 testing?</p> <p>25 A. Yes. I mean, based on years of experience in</p>	<p>1 Q. So it's your opinion that it wouldn't give you</p> <p>2 any helpful information --</p> <p>3 A. Not as --</p> <p>4 Q. -- if you put the dummy in the front seat?</p> <p>5 A. Not as helpful as the subject driver's seat on</p> <p>6 my vehicle inspection did.</p> <p>7 Q. Did you -- could you add weights to the</p> <p>8 Hybrid III dummy to take make it equal to the weight of</p> <p>9 Ms. Bryson?</p> <p>10 A. The 5th female, yes, but not add height, not</p> <p>11 enough height anyway, to get her as tall as Ms. Bryson.</p> <p>12 Q. Did she need to be as tall as Mrs. Bryson to see</p> <p>13 how the seat would yield in response to her weight?</p> <p>14 A. Yeah. I mean, if we really want to know, yes,</p> <p>15 because of the moment arm.</p> <p>16 Q. Is it your opinion that a Hybrid III dummy has</p> <p>17 to be exactly like the size and weight of the subject</p> <p>18 person in the crash in order to get useful information</p> <p>19 from it?</p> <p>20 MR. HILL: Object to the form.</p> <p>21 THE WITNESS: Not always, but in this case if we</p> <p>22 want to see if the driver's seat -- how much the driver's</p> <p>23 seat would yield, then yes, we'd have to have a</p> <p>24 matching -- a dummy that matched Mrs. Bryson.</p> <p>25 BY MS. CANNELLA:</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q. Exactly the same?</p> <p>2 A. Yes. And we already have that data from the</p> <p>3 subject vehicle, so it doesn't really add anything.</p> <p>4 Q. Do you know how much the seat yielded during the</p> <p>5 crash in the subject vehicle?</p> <p>6 A. Not much.</p> <p>7 Q. Dynamically?</p> <p>8 A. Dynamically probably about 10, maybe 15 percent</p> <p>9 more than it was statically, which was very, very little.</p> <p>10 I have the angles that I measured if you'd like those.</p> <p>11 Q. I'm more interested in whether any of you or</p> <p>12 your BRC coworkers used dummies that aren't exactly the</p> <p>13 same as the person in the wreck in order to gather</p> <p>14 information for your investigations.</p> <p>15 Has that ever happened?</p> <p>16 A. Yes. But not to determine yielding of a seat.</p> <p>17 Q. Never to determine yielding of a seat?</p> <p>18 A. Right.</p> <p>19 Q. Okay. And how do you know whether there's not</p> <p>20 much yielding in Ms. Bryson's seat because of her size</p> <p>21 versus the fact that she could have hit her child as she</p> <p>22 yielded back or hit the car seat as she yielded back?</p> <p>23 A. Because I know the static deformation compared</p> <p>24 to the child seat, and if we add 10 or 15 percent to</p> <p>25 that, we still don't get to the child seat.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Can you show me those which -- that prove --</p> <p>2 that support that opinion that you're saying?</p> <p>3 A. Yes. So I am looking at a folder of 207 photos</p> <p>4 of the scene by Georgia Highway Patrol Skirt Team, SCRT.</p> <p>5 Photo No. -- image -- so IMG, underscore --</p> <p>6 Q. Is this in your file? I'm sorry. Are</p> <p>7 you just -- I don't see this in what you gave me. You're</p> <p>8 just referring to the --</p> <p>9 A. Right. I didn't -- we didn't sort of</p> <p>10 regurgitate to you with this production everything that</p> <p>11 we received from Mr. Hill's office. So yes, these are</p> <p>12 photos that I received from him that he received -- well,</p> <p>13 I don't know from where, but they're from Georgia Highway</p> <p>14 Patrol, scene photos.</p> <p>15 Q. Okay. What's the image number?</p> <p>16 A. 9392.JPG.</p> <p>17 Q. Okay. Got it. Okay. Can you see that?</p> <p>18 A. Kind of. Let me look over here. Yes.</p> <p>19 Q. So what about this image that tells you that</p> <p>20 there was no -- that the front row driver's seat was not</p> <p>21 held up by the car seat in any way?</p> <p>22 A. Well, there's separation that's relatively large</p> <p>23 in between the two, and so we know that based on his</p> <p>24 injuries, Cohen Bryson's injuries, that the seat -- his</p> <p>25 extremities interacted with the driver's seat, his mom's</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. So it's your testimony that dynamically</p> <p>2 the amount that Cohen's child seat was moving forward and</p> <p>3 dynamically the amount that Mrs. Bryson's front seat is</p> <p>4 moving backwards wouldn't result in any contact between</p> <p>5 those two?</p> <p>6 A. No, I didn't say there was no contact. Cohen</p> <p>7 has fractured extremities, so there was contact with</p> <p>8 forward structures, which was likely the driver's seat</p> <p>9 back. But what I'm saying is we've certainly seen in</p> <p>10 other crashes seat back yielding that is clearly stopped</p> <p>11 or limited because of interaction with a row -- a seat</p> <p>12 behind it or a child seat behind it, et cetera, and</p> <p>13 that's not what happened here.</p> <p>14 Q. How do you know?</p> <p>15 A. Because I've been doing this a long time, and</p> <p>16 I've seen a lot of crashes, and I've seen the photos from</p> <p>17 this crash, and I've inspected the vehicle for this</p> <p>18 crash.</p> <p>19 Q. But aside from you just saying I've been doing</p> <p>20 this a long time, what physical evidence, what testing,</p> <p>21 what evidence do you have to say that Mrs. Bryson's seat</p> <p>22 was not held up, or it did not -- the yielding was not</p> <p>23 affected by the car seat behind it?</p> <p>24 A. Photographs of the scene and my vehicle</p> <p>25 inspection.</p>	<p style="text-align: right;">Page 53</p> <p>1 seat, and therefore the driver's seat would not reach the</p> <p>2 child safety seat.</p> <p>3 He has a fractured left femur, fractured right</p> <p>4 tibia, fibula and -- well, and his arm injuries as well.</p> <p>5 Q. Doesn't that indicate that his -- that the front</p> <p>6 seat did reach him?</p> <p>7 A. It reached him, absolutely, absolutely. They</p> <p>8 reached each other, yes. He was pushed forward, yes, but</p> <p>9 her seat didn't reach the child safety seat is what I was</p> <p>10 saying.</p> <p>11 Q. Can you use the annotation tool and show the</p> <p>12 bottom of the child safety seat, circle that area?</p> <p>13 A. I'm going to do a square, not a circle --</p> <p>14 rectangle. Sorry.</p> <p>15 Q. Okay. And would you agree that's extremely</p> <p>16 close to the driver seat?</p> <p>17 MR. HILL: Object to the form.</p> <p>18 THE WITNESS: I mean, I don't -- I don't know</p> <p>19 what extremely close really means. It's closer than when</p> <p>20 this crash started, yes.</p> <p>21 BY MS. CANNELLA:</p> <p>22 Q. It looks like probably within a couple of</p> <p>23 inches; wouldn't you agree?</p> <p>24 A. I don't know. I'm -- I would have to measure it</p> <p>25 to know, and I don't know how to do that on here. So I'd</p>



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<p style="text-align: right;">Page 54</p> <p>1 have to use photogrammetry, and I'd have to go back to 2 the vehicle or an exemplar to probably be able to do 3 that. 4 Q. Okay. So you can't give the opinion then that 5 the front seat did not -- was not held up by the car 6 seat, correct, since you don't know how much -- how far 7 it is from the car seat? 8 A. No, I can. Because we know that Cohen Bryson's 9 legs are between this driver seat and the seat pan of his 10 child safety seat, and so her seat, the driver's seat, 11 does not reach any part of the child safety seat. 12 Q. Okay. But, Dr. Gwin, what I'm trying to 13 establish is how you are basing -- what you have to base 14 your opinion on the idea that we know that the driver 15 seat was not held up by the structures behind it. 16 It's your testimony, as I understand it, that we 17 don't need to put a dummy in the front seat in the 18 Exponent crash test because we already know that the 19 front seat is not going to yield; correct? 20 MR. HILL: Object to the form. 21 BY MS. CANNELLA: 22 Q. Or not yield much? 23 MR. HILL: Same objection. 24 BY MS. CANNELLA: 25 Q. Is that right?</p>	<p style="text-align: right;">Page 56</p> <p>1 weight on the front seat, do we increase the chance of 2 the yielding of the driver's seat back, and the answer is 3 it depends. I mean, if you just put a dictionary on the 4 seat pan, probably not, or I should just say no. So it 5 matters how tall it is, et cetera. 6 But yes, if we put enough weight in the right 7 place on a seat in a rear crash test, we could see how 8 much the seat would yield. 9 BY MS. CANNELLA: 10 Q. Okay. And there was no weight put on the front 11 seat in the Exponent crash test; correct? 12 A. I think that's not true. And I am going to look 13 really quickly to make sure that I am correct on that, so 14 stand by one quick second. 15 That is not true. 16 Q. What did they put on the front seat? 17 A. Weight, ballast. 18 Q. Did they put anything on the back of the front 19 seat or just on the pan? 20 A. Well, both. It's on the pan, and it's also up 21 against the back. 22 Q. Hmm, how much? 23 A. Well, stand by. I just saw this the other day, 24 and now I'm not going to be able to find it. Let's see, 25 54 pounds on the seat.</p>
<p style="text-align: right;">Page 55</p> <p>1 A. That's one of the things, but the more important 2 reason is Cohen Bryson's catastrophic fatal brain 3 injuries were not due to interaction with the driver's 4 seat. They're not on the front of his face. They're on 5 the back of his head, essentially. 6 And so we know that that's not the injury 7 mechanism here, so it really doesn't matter. That's the 8 more important reason. 9 Q. Okay. Well, we got to get -- we got to get to 10 the bottom of it, so what I want to do is try to make it 11 simple, and so let me just ask these questions. 12 If you put weight on the front seat during a 13 rear collision, you're going to increase the amount of 14 yielding that you would see absent that weight; correct? 15 A. Let me answer that in a second, and let me tell 16 you that Keigo, our videographer, says we have five 17 minutes left, probably four now. 18 MS. CANNELLA: Okay. That's fine. We'll take a 19 break in just a few minutes. 20 THE WITNESS: Yeah, yeah. 21 I want to see if we can finish this. 22 THE WITNESS: No, no, that's fine. I just 23 wanted to let you know. 24 MS. CANNELLA: Thank you. 25 THE WITNESS: And so the answer is if we put</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Okay. And in your opinion, does this help you 2 know how much the seat yielded in the crash? 3 MR. HILL: Object to the form. 4 THE WITNESS: No. Because I don't need to know 5 that. 6 BY MS. CANNELLA: 7 Q. I'm not asking what you need to know. I'm 8 asking what the crash is telling you. Is it true that 9 you would have more yielding with a Hybrid III dummy, 10 5 percent Hybrid III dummy in the front seat than no 11 dummy? 12 A. Maybe. 13 Q. Okay. The answer to that is yes, isn't it? 14 A. No, not necessarily. Seats are really strong, 15 and there's a point below which they don't yield at all, 16 and with a 5th female dummy that may not reach the 17 threshold. 18 Q. Okay. In a crash where you get hit behind at 19 the speed that this Exponent crash was, you're going to 20 have yielding; correct? 21 MR. HILL: Object to the form. 22 THE WITNESS: With a 5th female dummy? 23 BY MS. CANNELLA: 24 Q. Sure. 25 A. I don't know. Maybe. I don't know.</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And the reason we don't know is because</p> <p>2 you didn't put a dummy in the crash test; correct?</p> <p>3 A. The reason we don't know is because I don't know</p> <p>4 if the weight and height of a 5th female dummy rises to</p> <p>5 the level of yielding of that particular seat design; and</p> <p>6 yes, if I had put a dummy in there, I would know how much</p> <p>7 a 5th female dummy would cause the seat to yield, if at</p> <p>8 all.</p> <p>9 Q. Okay. And we do not know that, but we do know</p> <p>10 there would be yielding with Ms. Bryson in the front</p> <p>11 seat, but we don't know how much; correct?</p> <p>12 MR. HILL: Object to the form.</p> <p>13 THE WITNESS: I don't know that there would be</p> <p>14 with Mrs. Bryson.</p> <p>15 MS. CANNELLA: Okay. Let's take the break.</p> <p>16 THE VIDEOGRAPHER: Going off the record. The</p> <p>17 time is 10:47.</p> <p>18 (Whereupon a short recess break was taken.)</p> <p>19 THE VIDEOGRAPHER: We're back on the record.</p> <p>20 Time is 11:02.</p> <p>21 MS. CANNELLA: And just to be clear, the video</p> <p>22 that's going to be produced at the end is not what I'm</p> <p>23 seeing. It's more zoomed in on the deponent; correct?</p> <p>24 THE VIDEOGRAPHER: Yes. That's just for the</p> <p>25 zoom.</p>	<p style="text-align: right;">Page 60</p> <p>1 some rear crashes.</p> <p>2 Q. Do you agree that Ford designs front seats to</p> <p>3 yield in rear collisions?</p> <p>4 A. I don't know. I'm not a Ford design engineer,</p> <p>5 so I think so, but I don't know. I certainly have no</p> <p>6 expert opinion about that.</p> <p>7 Q. You mentioned on page 9 of your report, a tear</p> <p>8 in the cargo cover. Can you find a picture this explains</p> <p>9 what you mean by that?</p> <p>10 A. I have just managed to minimize Zoom, and now</p> <p>11 I'm trying to find you again. Stand by.</p> <p>12 Q. Okay.</p> <p>13 A. How did I do that? This is crazy. Stand by.</p> <p>14 Sorry. I don't know what has happened here. Okay.</p> <p>15 There you go. All right. Stand by. Let me find the</p> <p>16 answer to that question.</p> <p>17 Point where you're finding that in my report,</p> <p>18 please.</p> <p>19 Q. The last sentence of the first paragraph of</p> <p>20 "Photographic Analysis."</p> <p>21 A. I'm sorry. Say that -- so "Photographic</p> <p>22 Analysis," first paragraph --</p> <p>23 Q. Oh, wait. Yeah, okay. No, that's not it. It's</p> <p>24 under "Vehicle Inspection." It's the second to last line</p> <p>25 on the page. "There were focal tears in the cloth</p>
<p style="text-align: right;">Page 59</p> <p>1 MS. CANNELLA: Okay. I just wanted to make</p> <p>2 sure.</p> <p>3 THE VIDEOGRAPHER: Yes.</p> <p>4 BY MS. CANNELLA:</p> <p>5 Q. Okay. Dr. Gwin, do you agree that yielding is</p> <p>6 what the auto industry calls it when the front seat</p> <p>7 reclines backward during a rear collision?</p> <p>8 A. Yes, in general.</p> <p>9 Q. And do you agree that yielding is a safety</p> <p>10 feature of the seat?</p> <p>11 A. Absolutely.</p> <p>12 Q. And do you agree that yielding is supposed to</p> <p>13 help reduce whiplash in low-impact crashes?</p> <p>14 A. It can, but no, that's not the purpose of</p> <p>15 yielding.</p> <p>16 Q. Okay. And do you agree that yielding is</p> <p>17 supposed to reduce injury in rear impact crashes by</p> <p>18 helping the front seat occupant ride down the crash</p> <p>19 forces?</p> <p>20 A. Yes.</p> <p>21 Q. Do you agree it's foreseeable that front seats</p> <p>22 would yield to the back seat?</p> <p>23 A. I don't know. Foreseeable, I think, is some</p> <p>24 kind of legal thing, so I don't really know if it's</p> <p>25 foreseeable or not. I'll say it certainly happens in</p>	<p style="text-align: right;">Page 61</p> <p>1 covering on the upper aft corners."</p> <p>2 A. That's of the child safety seat. I thought you</p> <p>3 were talking about the cargo cover. That's why I wanted</p> <p>4 you to find it for me. I'm talking about the child</p> <p>5 safety seat.</p> <p>6 Q. Okay. So the -- can you show me which tears</p> <p>7 you're talking about in the second to last sentence of</p> <p>8 page 9?</p> <p>9 A. Yes. So you have a folder called "VI 3-6-23."</p> <p>10 Q. Got it.</p> <p>11 A. And it will be Photo R0017287 is an overall</p> <p>12 photo that shows the tears in the cloth.</p> <p>13 Q. 17287, from the rear?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'm going to share my screen and ask you</p> <p>16 to circle those tears, and I can make it bigger or zoom</p> <p>17 in on something if that's helpful.</p> <p>18 A. Okay. Hang on one sec. Okay.</p> <p>19 MS. CANNELLA: I'll save that as Plaintiff's</p> <p>20 Exhibit 35 -- oh, no. Am I still here?</p> <p>21 MR. HILL: Yes.</p> <p>22 (Whereupon Plaintiff's Exhibit 35 was marked</p> <p>23 for identification.)</p> <p>24 MS. CANNELLA: It says "Zoom stopped</p> <p>25 unexpectedly." All right. That's great.</p>

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<p style="text-align: right;">Page 62</p> <p>1 BY MS. CANNELLA:  2 Q. Okay. On the issue of the crash test, do you  3 know how much the crash test cost?  4 A. No.  5 Q. And do you know if the vehicles have been  6 preserved from the crash test?  7 A. I would say yes. I haven't seen them since  8 then, but that's pretty typical.  9 Q. Did you do anything to measure the distance  10 between the second row and the front row after the crash  11 test?  12 A. I did not.  13 Q. Did you do anything to measure the distance  14 between the second row and the front row before the crash  15 test or during the crash test?  16 A. I did not.  17 Q. Did you look at an exemplar car seat as part of  18 your investigation?  19 A. Not specifically regarding this case, no.  20 Q. What assumptions did you make in your analysis  21 about Cohen's seated height from the buttocks to the top  22 of his head?  23 A. Stand by one quick second. I didn't make any  24 assumptions, but I could certainly measure -- no, due to  25 the poor quality of the films that were taken, I cannot</p>	<p style="text-align: right;">Page 64</p> <p>1 A. No.  2 Q. Did you take any measurements of the shop vac?  3 A. No, I couldn't. It was destroyed, but no, I did  4 not.  5 Q. You didn't take any measurements of it as  6 crushed; correct?  7 A. Correct.  8 Q. Did you obtain a exemplar shop vac or camping  9 chair?  10 A. I couldn't because the Brysons didn't know  11 anything about them to be able to do that.  12 Q. Well, the shop vac, though, was available;  13 correct?  14 A. I don't know. I don't think they knew the kind  15 of size or brand or anything that it was, so not that I'm  16 aware of.  17 Q. Did you have a picture of the shop vac?  18 A. No. I have a picture of a smashed drum and many  19 little plastic shards.  20 Q. Did you take any measurements of what you found  21 of the shop vac?  22 A. No.  23 Q. Could you determine what the make or model of  24 the shop vac was based on what you found?  25 A. No.</p>
<p style="text-align: right;">Page 63</p> <p>1 measure, so no assumptions and no measurements.  2 Q. Did you measure the crush in the Exponent  3 vehicle, any of the crashed Exponent vehicles?  4 A. I personally did not.  5 Q. And did you measure the crush in the subject  6 vehicles?  7 A. I certainly did not.  8 Q. Do you agree there's nothing wrong with people  9 using the cargo area of their vehicle to carry personal  10 items?  11 A. Absolutely not. I mean, yes, I agree with that,  12 that there's nothing wrong. There's nothing wrong with  13 people carrying items in their cargo area. There's also  14 nothing wrong with people not remembering exactly what  15 was in there or where it was. I certainly couldn't tell  16 you about my vehicle.  17 Q. Do you know what kind of camping chair was in  18 the trunk? What's your understanding of that?  19 A. Other than camping chair, and then I think I  20 have some photos from my vehicle inspection, but I don't  21 know. The Brysons didn't know sort of makes or models or  22 brands or anything, so beyond what I've seen, I don't  23 know.  24 Q. Did you measure -- take any measurements of the  25 camping chair?</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. How about the umbrella stroller, did you take  2 any measurements of the umbrella stroller?  3 A. No.  4 Q. And is the umbrella stroller or the frame of the  5 bolted down back seat of an SUV stronger?  6 A. I have no expert opinion about that. I could  7 probably guess, but I'm not here to guess about stuff, so  8 I have no expert opinion about that.  9 Q. Do you have an opinion about whether an umbrella  10 stroller or the bolted down back seat of an SUV would  11 deform first?  12 A. Same answer.  13 Q. I'm going to ask you the same questions about  14 the other items. What's stronger a shop vac or the  15 bolted down back seat of an SUV?  16 A. No expert opinion. I could guess, but no expert  17 opinion.  18 Q. Okay. And do you have an opinion about whether  19 the shop vac or the back seat of the SUV would deform  20 first?  21 A. No. Same.  22 Q. And do you have any opinion about whether a  23 camping chair or the bolted down back seat of an SUV is  24 stronger?  25 A. No.</p>

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<p>1 Q. Do you have an opinion about which would deform 2 first, the camping chair or the SUV back seat? 3 A. No. 4 Q. And certainly a bag of clothing, you would agree 5 is not stronger than the back of an SUV; correct? 6 A. The back? The Row 2 seat of an SUV? 7 Q. Correct. 8 A. I mean, same answer. I could guess as a lay 9 person, but I certainly don't have an expert opinion 10 about it. 11 Q. Do the scene photos show any of the items that 12 were cargo in the cargo area? 13 A. I think so, but I don't remember. 14 Q. Do you know where the cargo items were found at 15 the scene? 16 A. I believe they were smashed between the rear 17 structures of the SUV, the Ford Escape, and the Row 2 18 seat. 19 Q. And were any of those items found outside the 20 vehicle? 21 A. The spare tire was found outside the vehicle, 22 but I believe it must have been under the vehicle not in 23 the cargo area, so I don't believe any of the cargo area 24 contents were outside the vehicle. Certainly could there 25 have been a piece of plastic from the shop vac? Maybe.</p>	<p>1 A. Yes. 2 Q. In what way? 3 A. Well, I have an opinion about how it happened, 4 and that is interaction with the Row 2 seat moving 5 forward and the -- and contact -- and his foot or leg -- 6 and leg contacting the driver's seat. "His" being 7 Cohen Bryson, of course. 8 Q. So he got fractures there from contacting the 9 front seat with his foot and leg? 10 A. Yes. 11 Q. Does the right tibia and fibula fracture affect 12 your opinion on cause of death? 13 A. No. 14 Q. On your testimony list, did any of the cases on 15 your testimony list involve a lifted vehicle? 16 A. Well, let me go through them and see. So the 17 first one is Hofer, and the answer is no. Walker, no. 18 Velez, no. Ditter, no. Silva, I don't know, but it 19 certainly isn't part of the case. 20 Snelson, no. Zwierzynski, no. Zieske, no. 21 Hickcox, no. Hillman, no. Thorinsson no. No, okay. 22 Ruiz, I don't know if the Ruiz vehicle was lifted or not, 23 but certainly whether it was or not is not part of the 24 case -- was not part of the case. 25 Davis, no. The state of Texas versus Jacob</p>
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<p>1 If you would like me to look, I certainly can. 2 Q. That's okay. Your billing indicates that 3 Dr. Ryan Hernandez, radiologist, worked on this case; is 4 that correct? 5 A. He did, yes. 6 Q. And is he a BRC employee? 7 A. No. 8 Q. And how did you get in touch with him? 9 A. He does -- he's a subcontractor for us, so he 10 has a private radiology practice, but -- maybe not 11 private. He has a radiology practice, but he also works 12 with us from time to time. 13 Q. How often does he work with BRC? 14 A. I don't know. He works with me maybe once a 15 month or so. 16 Q. All right. Are his opinions any different than 17 Dr. Eisenstat's? 18 A. Yes. 19 Q. In what way? 20 A. Dr. Eisenstat missed a left -- no, right tibia 21 and fibula fracture. 22 Q. Okay. Anything else? 23 A. No. 24 Q. And does the right tibia and fibula fracture 25 affect your opinion?</p>	<p>1 Price, no. Youngblood, no. Christianson no. Huber, the 2 Huber -- the vehicle that Ms. Huber was in certainly was 3 not lifted. I don't have any idea if they were hit by a 4 lifted truck or hit a lifted truck. I don't really 5 remember anything about the other vehicle, but it's 6 certainly not part of the case. 7 Mead, I don't know if the Mead vehicle or the 8 vehicle Ms. Mead was in was lifted or not, but it's 9 certainly not part of the case. Rodrigues, no. Watson, 10 no. Blum, no. Flournoy, no. Coiffard, no. Loggins, I 11 don't remember if the vehicle that hit the Loggins 12 vehicle was lifted or not, but it's certainly not part of 13 the case. 14 Eichelberger, I don't remember what kind of 15 vehicle hit the Chrysler vehicle, but it's certainly not 16 part of the case whether anything was lifted or not. 17 Smith, no. Skeete, no. Ramos, no. Frost, no. Gamble, 18 I don't think either vehicle was lifted, but I don't 19 remember, but it's certainly not part of the case. 20 Forge, no. Nelson, no. Moe, no. McCall, no. 21 Naclerio, no. Switalski, no. Watson -- I'm sorry. 22 Walton, no. Reisbeck, I don't remember if Mr. Reisbeck's 23 vehicle was lifted, but whether or not it was is not part 24 of the case. 25 Nash, no. State of Texas versus Stacey Sellers,</p>

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<p style="text-align: right;">Page 70</p> <p>1 no. Richardson no. Butler, no. Edwards, I don't know  2 if Edwards or White vehicle were lifted or not, but it's  3 certainly not part of the case. Bazaldua, I don't  4 remember if the other vehicle, not the Bazaldua vehicle,  5 but the other vehicle was lifted or not, but it's not  6 part of the case.  7 Shelton, Kimberly, certainly she was not in a  8 lifted vehicle, and her child were not in lifted vehicle,  9 and I don't remember the other vehicle at all, but being  10 lifted or not was not part of the case.  11 Shelton, Inga, Mr. Shelton was certainly not in  12 a lifted vehicle, but I don't remember what the striking  13 vehicle was, but a lift kit was not part of this case at  14 all. Mills, no. Kartagener, no. Parker, no.  15 Q. Okay. So none that you can recall. Do you  16 recall any case that you've worked on where a lift kit  17 was the defective product at issue?  18 MR. HILL: Object to the form.  19 THE WITNESS: I have never worked on a case  20 where the lift kit was the item -- back to that, the  21 product at issue.  22 BY MS. CANNELLA:  23 Q. Have you ever worked on a case that you recall  24 where the striking vehicle was lifted?  25 A. Not that I recall.</p>	<p style="text-align: right;">Page 72</p> <p>1 an auto manufacturer?  2 A. I have never been hired in such a case because I  3 would be conflicted out and because generally the defense  4 lawyers are the ones who call is.  5 Q. So you've never testified for a plaintiff  6 against an auto manufacturer; correct?  7 A. Correct. Not like a car manufacturer. The  8 products that I almost testified about and then didn't  9 was tree trimming equipment that moved on its own, so  10 technically it's an automobile, but Ford, Chrysler,  11 Toyota, that sort of thing.  12 Q. Have you ever testified that a product caused  13 death or injury?  14 A. That would be something that I wouldn't really  15 testify about one way or the other because that would be  16 more of sort of a design thing or a defect thing, which I  17 never -- I have no opinions about, but I've certainly  18 testified that people have died in car crashes or have  19 been injured in car crashes due to, you know, interaction  20 with part of the car, part of the vehicle, et cetera.  21 Q. So you've never testified that a person was not  22 killed or injured by a product?  23 MR. HILL: Object to the form.  24 MS. CANNELLA: Yeah. That was kind of  25 confusing.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. All right. How much of the work that you do  2 involves working for auto manufacturers or auto product  3 manufacturers?  4 A. Right now of my open cases, 80 percent maybe.  5 Q. And how much of your work involves other kinds  6 of -- testifying on behalf other kinds of manufacturers?  7 A. Oh, sorry. I answered that based on all  8 manufacturers of products. So auto manufacturers, if we  9 include heavy trucks, 70.  10 All manufacturers of products, 80 maybe, and  11 then other, 20.  12 Q. What does the other 20 percent of your  13 constitute?  14 A. Current cases, criminal cases, cases that are  15 like general negligence where they're not -- no one is  16 suing a product manufacturer. I think that's about it.  17 Q. Have you ever testified own behalf of a person  18 who was a plaintiff in a case?  19 A. I have testified for lawyers who represent folks  20 that have been injured, yes.  21 Q. And how many times?  22 A. Once -- well, twice, same case, Switalski versus  23 Clevenger, and then once I got really close, and the case  24 settled right before my deposition.  25 Q. Have you ever testified for a plaintiff against</p>	<p style="text-align: right;">Page 73</p> <p>1 BY MS. CANNELLA:  2 Q. Have you ever testified that a product did not  3 cause a person's death or injury?  4 A. Again, I don't opine about -- I mean, that's  5 more of a design thing, like, you know, did the roof  6 deformation -- you know, should it have happened or not,  7 for example, more of a design thing, but --  8 Q. That's not my question.  9 A. Okay. Well, I'm trying to clarify, but I have  10 absolutely testified that a person was killed or injured  11 in a car wreck due to the way the vehicle moved, the way  12 stuff inside the vehicle moved, due to interaction with  13 parts of the vehicle, and I've also testified that people  14 have been catastrophically injured or killed due to  15 interaction with a part of the vehicle, but different  16 from what plaintiff has alleged, and I've also testified  17 that a person did not have the injuries that were being  18 claimed. So does one of those cover what you're trying  19 to ask?  20 Q. Did the lift kit cause Cohen's death?  21 A. So that's the question. Did the lift kit cause  22 Cohen's death? No, absolutely not.  23 Q. Have you ever testified that a product did cause  24 someone's death or injury?  25 A. Let me give an example and see if this answers</p>



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<p style="text-align: right;">Page 74</p> <p>1 it. I had a case where a gentleman was driving his 2 vehicle. It was a Chrysler vehicle. He was rear ended 3 at high speed. His seat yielded. His head struck the 4 No. 4 seat back and caused a catastrophic neck injury. 5 He subsequently died. I certainly didn't say that the 6 seat caused his neck injury. The crash caused his 7 injury. But microscopically what caused his injury was 8 head contact or interaction with the No. 4 seat back, so 9 maybe if that's what you mean. 10 Q. Have you ever testified that a product caused a 11 person's injury? Have you ever given testimony opposite 12 of what you're giving in this case? 13 MR. HILL: Object to the form. 14 THE WITNESS: Yes. 15 BY MS. CANNELLA: 16 Q. Okay. Can you tell me which product caused 17 someone's injury? 18 MR. HILL: Same objection. 19 THE WITNESS: I mean, various lift trucks where 20 people stuck their foot out, for example, prior to 21 impact. The case I testified about last Friday, Hofer, 22 Mrs. Hofer was run over by her vehicle. So the product 23 caused her injury, caused her death by asphyxiation. 24 BY MS. CANNELLA: 25 Q. And who were you testifying on behalf of in that</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. If I ask this question at trial, is this how 2 you're going to answer it? Microscopically, all products 3 cause all injuries? 4 MR. HILL: Object to the form. 5 THE WITNESS: Well, I've never said that, but I 6 would answer it the way I've answered it here. 7 BY MS. CANNELLA: 8 Q. Well, then, did the lift kit cause Cohen's 9 injury? 10 MR. HILL: Object to the form. 11 THE WITNESS: No. 12 BY MS. CANNELLA: 13 Q. It was involved. Microscopically, did it cause 14 Cohen's injury? 15 A. No. Microscopically, and maybe that's a bad 16 word, but microscopically, what caused his injury was his 17 child seat deformation striking him in his head with the 18 Row 2 seat behind it, the cargo behind it, the cargo door 19 lift gate behind it, the Ford behind it. 20 Q. Have you ever testified that a defect that 21 plaintiff alleged caused a person's death or injury? 22 A. I don't opine one way or the other about 23 defects. 24 Q. Have you ever testified that a product that a 25 plaintiff alleged was defective caused the injury?</p>
<p style="text-align: right;">Page 75</p> <p>1 case? 2 A. Lawyers that work for Nissan hired me in the 3 Hofer case. 4 Q. And you testified the Nissan caused her injury, 5 her death? 6 MR. HILL: Object to the form. Go ahead. 7 THE WITNESS: What caused her injury was she 8 turned the vehicle off from the outside of the vehicle 9 while it was in gear, and there were no brakes on. But 10 ultimately, microscopically again, like my other case, 11 yes, what killed her was the fact this she was under the 12 vehicle's left front wheel. 13 BY MS. CANNELLA: 14 Q. Dr. Gwin, I'm not asking microscopically. I 15 think we both understand that. 16 My question is have you ever been hired and 17 given testimony that a product was the cause of someone's 18 death or serious injury? 19 MR. HILL: Object to the form. 20 THE WITNESS: I do understand, and that's 21 exactly what I'm answering. I'm not able to say because 22 it's not any area whether some defect caused it, but the 23 product, a Nissan Altima, ran over Ms. Hofer and caused 24 her death, unfortunately. 25 BY MS. CANNELLA:</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. HILL: Object to form. Go ahead. 2 THE WITNESS: The whole product, yes. A Nissan 3 Altima was on top of Mrs. Hofer and killed her. 4 BY MS. CANNELLA: 5 Q. Can you give my other examples that are closer 6 to the situation we have here? 7 MR. HILL: Same objection. 8 THE WITNESS: Well, the one I talked about 9 before, Eichelberger, where Mr. Lewis was driving his 10 Chrysler product vehicle and was rear ended at high 11 speed. His seat yielded, and his head interacted with 12 the Row 4 seat back and caused his injury. So what 13 caused his injury was the crash and the fact that his 14 head interacted with the No. 4 seat back. 15 Do you want me to go through -- 16 BY MS. CANNELLA: 17 Q. And you were testifying for Chrysler in that 18 case; correct? 19 A. No. I was hired by lawyers who worked for 20 Adient. 21 Q. Which is the auto manufacturer -- auto product 22 manufacturer? 23 A. They make the seat that Mr. Lewis was sitting 24 in. 25 Q. Yes. So I'm looking for a direct answer to the</p>

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<p>1 question. Have you ever testified on the side of the</p> <p>2 plaintiff in a case where somebody alleges that a product</p> <p>3 caused the person's death?</p> <p>4 A. Say it one more time. Let me make sure I get</p> <p>5 all the words.</p> <p>6 Q. Have you ever testified on the side of a</p> <p>7 plaintiff in a case where someone alleges that a product</p> <p>8 caused a death or injury?</p> <p>9 A. Yes -- testified, no. The case settled right</p> <p>10 before that, my deposition. And like I said before in</p> <p>11 auto cases, I'm conflicted out on the plaintiff's side</p> <p>12 and plus defense lawyers are who usually calls us.</p> <p>13 Q. Have you ever testified on the side of the</p> <p>14 plaintiff in a case where it is alleged that a product</p> <p>15 killed the plaintiff?</p> <p>16 A. I think that's exactly the answer I gave, no.</p> <p>17 Q. Is the answer no?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. The answer is no.</p> <p>20 Second question. Are you conflicted out of</p> <p>21 testifying against auto manufacturers?</p> <p>22 A. Yes. So if you were to call me saying you were</p> <p>23 hiring me for Ford Motor Company --</p> <p>24 Q. That's the only question I have. I don't need a</p> <p>25 story about it. That's just the question.</p>	<p>1 A. Somewhere between 2013 and 2015, probably.</p> <p>2 Q. And did you do, aside from Transport Canada, did</p> <p>3 you do any work on behalf of safety organizations?</p> <p>4 A. Not specifically safety organizations, no.</p> <p>5 Q. Have you done any work for safety -- strike</p> <p>6 that. Sorry.</p> <p>7 Have you done any work to determine how to</p> <p>8 prevent injuries in crashes?</p> <p>9 A. Any work? Not specifically.</p> <p>10 Q. How many times have you testified on behalf of</p> <p>11 Ford?</p> <p>12 A. I have no idea opinion. I can count them in the</p> <p>13 last four years, anyway, if you'd like.</p> <p>14 Q. No, that's okay. I've got the document.</p> <p>15 Have you testified on behalf of General Motors?</p> <p>16 A. I have been hired by General Motors' lawyers,</p> <p>17 yes, and testified, yes.</p> <p>18 Q. Have you testified on behalf of Daimler</p> <p>19 Chrysler?</p> <p>20 A. Not when it was Daimler Chrysler, I don't</p> <p>21 believe. Daimler is separate from Stellantis now, but</p> <p>22 when they were together, no, I don't think so.</p> <p>23 But have I worked and testified in Stellantis</p> <p>24 cases, yes; or FCA or Chrysler cases, yes; and Daimler</p> <p>25 cases, yes.</p>
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<p>1 Have you ever testified against Ford in a case?</p> <p>2 A. I've never been across the V from Ford Motor</p> <p>3 Company.</p> <p>4 Q. Have you ever done any work with safety</p> <p>5 organizations?</p> <p>6 A. Yes.</p> <p>7 Q. Which ones?</p> <p>8 A. Transport Canada.</p> <p>9 Q. Okay. And what did you do for Transport Canada?</p> <p>10 A. Determined the concussion risk of a trunk lid</p> <p>11 falling onto a head.</p> <p>12 Q. And is Transport Canada a safety organization?</p> <p>13 A. Yes.</p> <p>14 Q. It's not a transportation company?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And what was the risk of a trunk lid</p> <p>17 falling on someone's head?</p> <p>18 A. I have no idea. I measured the risk of</p> <p>19 concussion if a trunk lid falls on someone's head, so in</p> <p>20 my case 100 percent risk of the trunk lid falling.</p> <p>21 Q. Okay. And did you write a paper about it?</p> <p>22 A. No.</p> <p>23 Q. Did you give any kind of written product?</p> <p>24 A. No.</p> <p>25 Q. When did you do that work?</p>	<p>1 Q. Have you testified on behalf Toyota?</p> <p>2 A. I -- there are -- yes.</p> <p>3 Q. Have you testified on behalf of Mazda?</p> <p>4 A. Yes.</p> <p>5 Q. Subaru?</p> <p>6 A. Yes.</p> <p>7 Q. How much of the paid work you do is litigation</p> <p>8 consulting?</p> <p>9 A. Now, all of it.</p> <p>10 Q. How many employees does BRC have now?</p> <p>11 A. 70-ish.</p> <p>12 Q. How long has BRC existed?</p> <p>13 A. Since 1986.</p> <p>14 Q. What is BRC's revenue in a year?</p> <p>15 A. I have no idea.</p> <p>16 Q. What's BRC's net profit in a year?</p> <p>17 A. I have no idea.</p> <p>18 Q. I'm going to ask you at trial, so I'd like you</p> <p>19 to look into that. Would you agree to do to that?</p> <p>20 MR. HILL: Object to the form.</p> <p>21 THE WITNESS: If Mr. Hill and Ms. Ferguson and</p> <p>22 BRC -- if they say yes, and BRC can do it, sure.</p> <p>23 BY MS. CANNELLA:</p> <p>24 Q. Are you a shareholder of BRC?</p> <p>25 A. Yes.</p>



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<p style="text-align: right;">Page 82</p> <p>1 Q. Will you remain a shareholder after retirement?</p> <p>2 A. No. Once -- no.</p> <p>3 Can you go back and tell me? It's annual</p> <p>4 profit? What is it that you're going to want, and then</p> <p>5 we'll decide if we can do it or not, but I want to be</p> <p>6 prepared. Annual profit and?</p> <p>7 Q. Revenue.</p> <p>8 A. Thank you.</p> <p>9 Q. Okay. What is a shareholder? What does that</p> <p>10 mean at BRC?</p> <p>11 A. A person who owns shares.</p> <p>12 Q. Do they share in profits?</p> <p>13 A. Generally, my understanding of profit sharing is</p> <p>14 that there's like a distribution, so at the end of the</p> <p>15 year if there's a profit, it's dolled out. And the</p> <p>16 answer if that's what profit sharing is, the answer is</p> <p>17 no.</p> <p>18 Q. Okay. So the shareholders get dividends?</p> <p>19 A. Yes.</p> <p>20 Q. And do dividends, the amount of the dividends,</p> <p>21 does that depend on profits?</p> <p>22 A. It depends on a lot of things, I'm sure, and the</p> <p>23 board decides what those things are.</p> <p>24 Q. And you've been on the board before; correct?</p> <p>25 A. I was, yes.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. I have no idea.</p> <p>2 Q. Is there a facility for testing on the property?</p> <p>3 A. It's on the adjacent lot, but yes.</p> <p>4 Q. Is there a facility for storing cars there at</p> <p>5 BRC?</p> <p>6 A. No.</p> <p>7 Q. How many times have you worked with Rick Hill,</p> <p>8 the lawyer for Rough Country?</p> <p>9 A. This is it, one.</p> <p>10 Q. How about Ms. Ferguson, the other lawyer for</p> <p>11 Rough Country?</p> <p>12 A. This is it, one.</p> <p>13 Q. How many times have you worked for lawyers at</p> <p>14 Weinberg Wheeler, the law firm for Rough Country?</p> <p>15 A. This is it, I believe, one.</p> <p>16 Q. How did you get connected with the lawyers in</p> <p>17 this case?</p> <p>18 A. I'm not sure.</p> <p>19 Q. They just called you out of the blue?</p> <p>20 A. Yes. Well, they called my office out of the</p> <p>21 blue, as far as I know out of the blue. I'm sure they</p> <p>22 had some connection, but I don't know what it is.</p> <p>23 Q. And are you retiring soon?</p> <p>24 A. Let us pray.</p> <p>25 Q. Is that your goal?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. And does the board take into account profits</p> <p>2 when it decides how much dividends it will pay its</p> <p>3 shareholders?</p> <p>4 A. I mean, that's part of it or lack thereof.</p> <p>5 Q. How many shareholders are there at BRC?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you have to be an employee to be a</p> <p>8 shareholder?</p> <p>9 A. Yes.</p> <p>10 Q. Can any employee be a shareholder?</p> <p>11 A. I think so.</p> <p>12 Q. Where is BRC located?</p> <p>13 A. San Antonio, Texas.</p> <p>14 Q. Does it have its own building?</p> <p>15 A. Yes.</p> <p>16 Q. Or is it a building with other people, other</p> <p>17 companies?</p> <p>18 A. Currently by ourselves, formerly with other</p> <p>19 companies.</p> <p>20 Q. Does BRC own the building?</p> <p>21 A. Yes.</p> <p>22 Q. And what kind of building is it, an office</p> <p>23 building, or warehouse-type thing?</p> <p>24 A. Office building.</p> <p>25 Q. How many offices are in it?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Isn't that everybody's goal? Yes.</p> <p>2 Q. It says on your website you're tying up --</p> <p>3 you're finishing up cases now and not accepting any new</p> <p>4 cases; is that correct?</p> <p>5 A. I don't know. I'm glad if it does, though.</p> <p>6 Q. Well, is it a true fact what the --</p> <p>7 A. Yeah.</p> <p>8 Q. That statement, okay.</p> <p>9 A. Yep.</p> <p>10 Q. And how old are you?</p> <p>11 A. Good heavens, 58.</p> <p>12 Q. Have you ever had training on how to testify?</p> <p>13 A. Not really training, certainly the old guys</p> <p>14 teach the new guys when they start, when you're having a</p> <p>15 deposition, don't say um too much, things like that, so</p> <p>16 sort of training, but it's not something official.</p> <p>17 Q. Do they grill you and kind of ask you a bunch of</p> <p>18 questions and see how you answer?</p> <p>19 A. Yes.</p> <p>20 Q. And how many times did you do that?</p> <p>21 A. I don't know. Two or three, maybe.</p> <p>22 Q. And who were the people that were running those</p> <p>23 sessions or doing the coaching?</p> <p>24 A. Dr. Robert Banks and Dr. Ted Bane.</p> <p>25 Q. You did an LEC in this case; correct?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. Yes.</p> <p>2 Q. And that stands for lawyer engineering</p> <p>3 conference?</p> <p>4 A. Yeah, or legal engineering conference.</p> <p>5 Q. And who was present -- or let me ask you this:</p> <p>6 Was it in person or over some kind of video conferencing?</p> <p>7 A. Video conferencing.</p> <p>8 Q. And who attended?</p> <p>9 A. Mr. Grimes, Mr. Crosby, me, likely Jessica Gaul</p> <p>10 from my office, one of our test engineers, and lawyers,</p> <p>11 likely Mr. Hill and Ms. Ferguson.</p> <p>12 Q. Anybody else?</p> <p>13 A. I don't think so.</p> <p>14 Q. And when was that?</p> <p>15 A. I don't know. Let me see if I can figure it</p> <p>16 out. I'd have to look at the bills to see if I could</p> <p>17 figure that out. Do you want me to do that?</p> <p>18 Q. Let's hold on that. We'll come back to it.</p> <p>19 Did anybody give presentations at that LEC?</p> <p>20 A. I don't think so. It was really to discuss the</p> <p>21 testing that we were going to do, as we discussed before.</p> <p>22 Q. And then if I look at the billing --</p> <p>23 MS. CANNELLA: Mark them as Plaintiff's</p> <p>24 Exhibit 20.</p> <p>25 (Whereupon Plaintiff's Exhibit 20 was marked</p>	<p style="text-align: right;">Page 88</p> <p>1 structures of the Escape based on a -- based on being</p> <p>2 struck by a F250 with stock suspension or no lift kit.</p> <p>3 Q. And was there any discussion about whether to</p> <p>4 put a car seat or any dummies into the Exponent crash</p> <p>5 test?</p> <p>6 MR. HILL: At this point I'm going to object.</p> <p>7 To the extent that you had discussions with an expert,</p> <p>8 you can talk about that. But to the extent your --</p> <p>9 you're not to disclose discussions with the lawyers</p> <p>10 regarding any of those type of issues.</p> <p>11 MS. CANNELLA: Well, you have to disclose the</p> <p>12 stuff about assumptions and the work that you did.</p> <p>13 MR. HILL: Yeah. She can disclose her own</p> <p>14 assumptions and the work she did and her discussions with</p> <p>15 other experts, but discussions with the lawyers and the</p> <p>16 directly, that's something that's not discoverable.</p> <p>17 MS. CANNELLA: Is it your position she can't</p> <p>18 talk about discussions with you regarding the assumptions</p> <p>19 in the case?</p> <p>20 MR. HILL: That's correct.</p> <p>21 MS. CANNELLA: Okay. Well, I'm going to ask</p> <p>22 those questions. You can instruct her not to answer, but</p> <p>23 the rules specifically says those communications are</p> <p>24 discoverable.</p> <p>25 MR. HILL: Well, I would disagree. The</p>
<p style="text-align: right;">Page 87</p> <p>1 for identification.)</p> <p>2 MS. CANNELLA: So I'll put that on the screen so</p> <p>3 we can get it in the record. Shared screen doesn't seem</p> <p>4 to want to work here. I can't get it up there. We can</p> <p>5 try that on a break.</p> <p>6 I've marked as Plaintiff's Exhibit 20, just for</p> <p>7 the record, if you pull up your copy for the billing.</p> <p>8 BY MS. CANNELLA:</p> <p>9 Q. Can you see when that happened?</p> <p>10 A. Well, there would have been several times that</p> <p>11 we all talked, like you and I talked about before. Let's</p> <p>12 see, likely -- let's see, here we go. 3/27 of '23 was</p> <p>13 one time we spoke.</p> <p>14 Q. And how long did you speak that time?</p> <p>15 A. I think it was 2.4 hours, so two hours and 24</p> <p>16 minutes or some portion thereof the 24 minutes.</p> <p>17 Q. And what did you talk about and present?</p> <p>18 A. We all talked about testing, like you and I</p> <p>19 talked about before.</p> <p>20 Q. Okay. And did you make any requests about how</p> <p>21 to conduct the tests?</p> <p>22 A. Yes.</p> <p>23 Q. What were your requests?</p> <p>24 A. Well, that we should follow the reconstruction</p> <p>25 of Mr. Grimes and determine the deformation of the rear</p>	<p style="text-align: right;">Page 89</p> <p>1 communication with the lawyers regarding the case are not</p> <p>2 discoverable.</p> <p>3 MS. CANNELLA: All right. Well, just instruct</p> <p>4 her not to testify whenever you think that that's the</p> <p>5 case.</p> <p>6 MR. HILL: Sure.</p> <p>7 BY MS. CANNELLA:</p> <p>8 Q. Okay. So was there any discussions at the LEC</p> <p>9 about whether to put dummies in the cars in the Exponent</p> <p>10 test?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what was that discussion? What were</p> <p>13 the contents of that discussion?</p> <p>14 A. Well, we talked about whether it would be of any</p> <p>15 value to add dummies, crash test dummies or</p> <p>16 anthropomorphic test devices, which is the proper name</p> <p>17 for them.</p> <p>18 You don't know this already, Ms. Cannella, but I</p> <p>19 have a sheet next to me that I'm writing weird spellings</p> <p>20 down on for Justus, our court reporter. At the end I'm</p> <p>21 going to hand this to him, so I just wrote</p> <p>22 anthropomorphic test devices.</p> <p>23 Q. I figured.</p> <p>24 A. Yeah. So we discussed whether it would be of</p> <p>25 any value to add ATDs to the Ford Escape or the Ford</p>

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<p style="text-align: right;">Page 90</p> <p>1 F250, for that matter, and the answer was no for all the  2 reasons that you and I have already discussed this  3 morning.  4 Q. Okay. And did anyone think that it would be  5 helpful to provide helpful data to put dummies into the  6 Exponent crash test?  7 A. No.  8 Q. Did you show a presentation at the  9 March 27, 2023, LEC?  10 A. No.  11 Q. Did you take any notes?  12 A. No.  13 Q. Did anyone else show any slides or exhibits at  14 the March 27, 2023, LEC?  15 A. I don't think so, no.  16 Q. Did -- was there any discussions by the lawyers  17 regarding assumptions that they provided that the expert  18 relied on in forming their opinions?  19 MR. HILL: I'll object. What do you mean  20 "assumptions"?  21 MS. CANNELLA: Just straight out of Rule 26.  22 MR. HILL: All right. Go ahead and answer if  23 you can.  24 THE WITNESS: No. And when lawyers do try to  25 give me assumptions, I ignore them because I'm relying on</p>	<p style="text-align: right;">Page 92</p> <p>1 A. No.  2 Q. Mr. Crosby was and Mr. Grimes?  3 A. Yes.  4 Q. How about Ann Grimes?  5 A. I don't know who that is, so no.  6 Q. Were you asked to do any work after the LEC, the  7 March 27, 2023, LEC?  8 A. Not that I can recall.  9 Q. And you did the crash test after the LEC.  10 Anything else?  11 A. Anything else what?  12 Q. Anything else work-wise that you needed to do  13 after the LEC?  14 A. Write a report, present for deposition, go to  15 trial.  16 Q. Okay. But I mean like in this case, just the  17 report and then getting ready for deposition is the main  18 thing?  19 A. Review any new materials that come in after the  20 LEC, review the testing at Exponent once it's done.  21 That's all I can think of off the top of my head.  22 Q. Okay. And can we go through the rest of the  23 bills and let me know what other LECs or meetings you had  24 with the experts?  25 A. On page 11 of the bills on April 27, '23, it's</p>
<p style="text-align: right;">Page 91</p> <p>1 data and evidence, so -- but in this case, no, these  2 lawyers did not try to do that.  3 BY MS. CANNELLA:  4 Q. Were there any facts or data that the lawyers  5 provided that the experts considered in forming their  6 opinions?  7 A. Good heavens, yes. Tons and tons of documents.  8 Q. And were those -- would the lawyers discuss  9 those during the LEC?  10 A. The lawyers don't talk much at LECs generally,  11 and this was no different, so no, it was documents that  12 we were provided that we all went through -- I went  13 through to form my opinions.  14 But the lawyers don't, like, point on the  15 certain records or anything like that.  16 Q. Did anyone express concern that they might not  17 like the measurements that the -- that they got from the  18 dummies if they put dummies in the crash test?  19 A. No.  20 Q. What was your understanding of Mr. Grimes'  21 opinions at the time of the March 27, 2023, LEC?  22 A. I don't remember specifically on that date, but  23 before the testing at some point his reconstruction,  24 which is outlined in my report.  25 Q. Was Mr. Pasquerella at the LEC?</p>	<p style="text-align: right;">Page 93</p> <p>1 called "Contact With Client." I don't remember  2 specifically, but likely being two weeks before the  3 testing, this was also a quick call with -- well, not  4 that quick, 1.4 hours, but a call with experts and  5 lawyers to sort of finalize the testing plan.  6 Q. What's the difference between contact with  7 client and -- one second, let me find it.  8 A. Technical conference.  9 Q. Yeah. What's the difference between a technical  10 conference and the contact with client?  11 A. Likely in this case which case manager is  12 entering it into our system because likely that's what  13 this was on that date was another call with lawyers and  14 engineers -- experts, I mean.  15 Q. Okay. Okay. When's the next teleconference or  16 conference with lawyers and/or other experts?  17 A. Page 12, this one is also called "Contact With  18 Client." There was -- let's see, May 5th, 1.5 hours. So  19 again, that would have been last-minute conversations  20 about testing with experts and lawyers.  21 Q. What is being discussed for so much time, like  22 an hour and a half, two times there within a couple  23 weeks, a week and a half?  24 A. I remember one of the topics that we discussed  25 several times were wheels on the Ford F250, whether we</p>

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<p style="text-align: right;">Page 94</p> <p>1 would use the larger wheels and tires that Mr. Elliott 2 had on his vehicle or whether we would use the stock 3 wheels and tires that would come with the F250. 4 Q. Uh-huh. 5 A. So we talked about that a lot. 6 Q. What was the resolution of that? 7 A. Because we wouldn't be able -- you wouldn't be 8 able to drive the F250 with the stock suspension and the 9 big wheels, to use the stock wheels. 10 Q. Okay. Any other conversations you remember 11 during these meetings? 12 A. No. I mean, things like what time are we 13 showing up, you know, things like that, but nothing of 14 any substance that I can remember. 15 Q. Okay. All right. When was the next meeting 16 with experts and/or lawyers? 17 A. I think that was it. 18 Q. Okay. If you look at page 2 of your bills, 19 Plaintiff's Exhibit 20, it says that you purchased an 20 exemplar for \$275, what was that -- or \$257, excuse me, 21 and 64 cents. 22 A. Well, that is before I was on the case, so I 23 don't know. I would be guessing. Certainly not a 24 vehicle. I don't know. 25 Q. There's no pictures of an exemplar in your file?</p>	<p style="text-align: right;">Page 96</p> <p>1 seat. Sometimes we'll use an exemplar if we don't have 2 the actual one. 3 Q. My calculation of your total bills is 4 \$87,614.49. Does that sound about right? 5 A. I don't know. I'd have to do the math myself, 6 and that's certainly billing for all of BRC, if you're 7 taking it from these bills including expenses and 8 everything. 9 Q. Correct, yes. 10 MS. CANNELLA: And I'm marking an exhibit that I 11 can't show you. When we take a break, I'll log off and 12 log back on and see if I can show exhibits, but 13 Plaintiff's Exhibit 31 is a chart that adds up those 14 amounts. 15 So I would like to enter that and give you some 16 time to look at that. 17 (Whereupon Plaintiff's Exhibit 31 was marked 18 for identification.) 19 BY MS. CANNELLA: 20 Q. Your bills that we have go through 21 March 31, 2024; correct? 22 A. Oh, not the bill date, but the event date is 23 what you mean; right? 24 Q. The work that you did. 25 A. What was the date, march what?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. No. 2 Q. When did you start on the case? 3 A. February, I believe, of '23. 4 Q. Who would have directed the purchase of an 5 exemplar? 6 A. I don't know. Dr. Lars Reinhart was involved in 7 the case prior to my involvement, so perhaps he. 8 Q. And what was his role? 9 A. Some -- doing some analysis on the case, 10 preliminary analysis on the case. 11 Q. Is he a testifying expert? 12 A. He is. 13 Q. Do you know why he was not the testifying expert 14 in this case? 15 A. My understanding is there were some, like, 16 scheduling conflicts with his schedule. I know that he 17 takes summers off to -- he has little kids still, not 18 little, but school-aged kids still, and so that may have 19 been it. 20 Q. Typically, would -- if an exemplar is bought for 21 a case, would pictures of it be in a file? 22 A. Only if it's used for something. 23 Q. Okay. Why didn't you use an exemplar of the car 24 seat? 25 A. Because I saw the subject car seat, child safety</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. 31st, 2024. 2 A. It's kind of nitpicky, I suppose, but the 3 latest -- the most recent entry I see is 3/29, but yes, 4 the April 10th bill would include all our work through 5 the 31st if there were any, if that's really what you 6 meant, yes. 7 Q. So the bills that we have go through 8 March 31, 2024; correct? 9 A. Yes. 10 Q. And those bills would not include work done in 11 April or May this year; correct? 12 A. Correct. 13 Q. Is that when your time preparing for the 14 deposition would have been? 15 A. Yes. 16 Q. So if your bills are 87,000 and change at the 17 end of March, is it fair to say that your total bills at 18 this time would be close to \$100,000? 19 A. I doubt it. 20 Q. All right. Would you agree to provide the rest 21 of your bills before trial? 22 A. Yes. 23 Q. All right. The radiologist spent -- if you go 24 to page 6 of the bills, he spent about -- I count 4.3 25 hours in March. And then before that he spent five hours</p>

25 (Pages 94 - 97)

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<p style="text-align: right;">Page 98</p> <p>1 in February -- or .5 hours in February for a total of 2 just under 5 hours. 3 Does it normally take five hours to review 4 radiology? 5 MR. HILL: Object to the form. 6 THE WITNESS: I don't think what you just said 7 is true, so hang on one quick second. 8 BY MS. CANNELLA: 9 Q. Okay. 10 A. I think what you saw in February -- now, I'm not 11 going to be able to find it again -- was probably 12 radiology coordinator who is a different person, but the 13 answer to your question does it normally take five hours 14 to look at radiology, the answer is it certainly depends 15 on the case. 16 Most cases are a whole lot more than that, but 17 it's not just looking at radiology. It's looking at the 18 radiology, then looking at it with me to show me the 19 radiology, writing a report, and providing what we call 20 radiology keys or key images in a PowerPoint. 21 So it's all of that time, and if it's about five 22 hours for this case, that would not surprise me and 23 sounds about right. 24 Q. Okay. Page 7 has work that an engineer was 25 doing. What kind of work would an engineer be doing in</p>	<p style="text-align: right;">Page 100</p> <p>1 I don't review their time, so I don't know, but it 2 wouldn't surprise me based on the amount of materials we 3 usually receive. 4 Q. What is a visual communications underneath the 5 document specialist? 6 A. They are medical illustrators who work for BRC 7 that sometimes put together trial exhibits or, you know, 8 other exhibits, things that we can use to demonstrate our 9 ideas. 10 Q. And what exhibit did they prepare in this case? 11 A. That's a great question. I don't know, nor do I 12 know why they would be on a technical conference. I'm 13 not sure. 14 Q. And did Ms. Gaul go to the LEC in March? 15 A. Yes. As I recall, yes. 16 Q. The March 5th and 6th, 2023, reflects a file 17 review and an analysis. 18 A. Where are you? So I can -- please. 19 Q. Okay. Page 6. 20 A. Okay. 21 Q. You've got it looks like full days' work on file 22 review and analysis on March 5th and March 6th; is that 23 correct? 24 A. Yes. 25 Q. All right. And the LEC was March 23rd;</p>
<p style="text-align: right;">Page 99</p> <p>1 this case? Do you know? Page 7, let me find it, where 2 did it go, 6 through 7. 3 A. So the answer to what would an engineer do is a 4 million things, but in this case, Ms. Gaul, the engineer 5 that I work with, what she did in this case is 6 participated in the phone calls regarding the crash 7 testing, participated in the crash testing, itself, did 8 her review of the file materials to be ready to discuss 9 the case and the testing. 10 As I mentioned before, she's a test engineer, so 11 she has extensive experience with crash testing and all 12 sorts of other testing, so things like that. 13 Q. What is a document specialist referred to on 14 page 9? 15 A. That is a person who just organizes records, so 16 we have a paralegal and a nurse analyst. This would be a 17 person who touches the file before them typically or 18 during the analysis, organizing medical records, 19 organizing legal documents, things like that, putting 20 them all together so the paralegal and the nurse analyst 21 can do their work. 22 Q. And it would take, like, 40 hours to do that? 23 A. Depending -- 24 Q. Over the course of -- 25 A. Depending on the case that wouldn't surprise me.</p>	<p style="text-align: right;">Page 101</p> <p>1 correct -- or March 27th; right? 2 A. I don't remember, whatever I said before. 3 Q. Okay. And the expenses on page 9 for that month 4 have three different entries for air transportation. Why 5 are there three entries? 6 A. Likely, the one is Ms. Gaul's round trip ticket, 7 and I never buy round trip tickets, so likely two of -- 8 the other two are my one-way ticket to Phoenix, Exponent. 9 Q. One to Phoenix and one back? 10 A. One to wherever I was going next and -- yes, 11 yes. 12 Q. Okay. Do you usually fly first class? 13 A. No. 14 Q. Just it's a lot more than Ms. Gaul's, so I was 15 wondering about, like, if there's a reason for that. 16 MR. HILL: Object to the form. 17 BY MS. CANNELLA: 18 Q. Do you know? 19 A. I would think that hers would be the 877 and 20 mine would be the 578 plus 243, so -- but I don't 21 remember for sure, but considering they're separated like 22 that, I would think that's the case. 23 Q. What is an equipment usage fee? 24 A. One of the examples is that an engineer would 25 take a scanner, a 3-D scanner to an inspection or an EDR</p>



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<p style="text-align: right;">Page 102</p> <p>1 reader -- not my area, as you can imagine, but some kind 2 of equipment. Probably -- well, 3/6, I believe that's my 3 vehicle inspection, I think. 4 And so Ms. Gaul would have brought the scanner 5 along which means on that 3/5 and 3/6 those flights are 6 not to Phoenix. They're to the vehicle inspection, I 7 think, but I'd have to look at the dates to be sure. 8 Q. Okay. So the dates there are when you're 9 traveling, not when you bought the ticket, usually? 10 A. Yes, yes. Yes, March 6th was my -- yes, that's 11 exactly true. 12 Q. So this usage fee, is that for a scanner in this 13 case? 14 A. Yes. 15 Q. All right. On 5/15, which is page 12, you did 16 eight hours of testing and data analysis. 17 Do you see that, your last entry? 18 A. Yes. 19 Q. How did you receive the data that you were 20 analyzing? Was it by e-mail? 21 A. Hang on a second. So on 5/15 that was the crash 22 testing, itself, so I can answer your question, but it's 23 not about what -- the hours on 5/15, but how did I 24 receive the Exponent crash testing results? 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 104</p> <p>1 conference related time 329.1? 2 Q. Yes, ma'am. 3 A. Likely, that was Pam sending you my report. 4 Q. And then contact with clients several times 5 before that day. Do you remember those conversations? 6 A. Those were likely also regarding my report as I 7 was writing it. 8 Q. Did you have questions for the lawyers? 9 A. I don't really recall the specifics, but 10 generally in federal court I'll send a draft ahead of 11 time, and then sometimes we talk about it. Sometimes 12 they point out that I've spelled something wrong, God 13 forbid, or, you know, asked -- you know, said I put in 14 the wrong date for something or asked me a question about 15 something, things like that. 16 MS. CANNELLA: Do you guys want to take a break, 17 and I'll try signing off and on? 18 THE WITNESS: Sure. 19 THE VIDEOGRAPHER: We're going off the record. 20 Time is 12:22. 21 (Whereupon a lunch recess was taken.) 22 THE VIDEOGRAPHER: We're back on the record. 23 Time is 1:11. 24 BY MS. CANNELLA: 25 Q. Okay. Dr. Gwin, you wanted to clear something</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Either e-mail or more likely like a link, like a 2 share file or Dropbox or something like that, link. 3 Q. On page 20 there's a reference to exhibit 4 preparation. What exhibit is that? 5 A. Once again, I am not sure. Let's see, that was 6 January of this year. I don't know because we've not 7 done exhibits yet. 8 Q. How about the teleconference on 9 January 30, 2024, who was that with? 10 A. I don't recall. Likely, Mr. Hill and/or 11 Ms. Ferguson, but I don't remember that call. 12 Q. Doesn't look like you were actually on it. It 13 looks like it was visual communications? 14 A. Oh, right. Well, there you go, and once again 15 I'm not sure why they'd be on a teleconference, so I'm 16 not sure what these entries mean. 17 Q. Okay. And your written report in the case was 18 done on March 27, 2024; correct? 19 A. I think it was March 29th. March 29th is when 20 it was due. I certainly worked on it before that date. 21 Q. Okay. All right. Then there's a teleconference 22 with -- or it says teleconference and related time on 23 March 29, 2024, page 23. 24 Do you remember that? 25 A. Are you talking about on page 23, technical</p>	<p style="text-align: right;">Page 105</p> <p>1 up for the record? 2 A. I did. Thank you. So you received as part of 3 my production a PDF version of a PowerPoint called, 4 essentially, LEC and a date, I think March 27th. So I 5 didn't find that before, so I thought I must not have 6 presented anything. 7 So earlier when I said I didn't present anything 8 at the LEC, I actually did. And it's the PowerPoint 9 which is now the PDF that you have. And when I said I 10 don't know why the visual communications guys were 11 preparing exhibits, that's what they were preparing is 12 the template for the LEC PowerPoint, but then I edit to 13 show at the conference, so my bad. 14 Q. Okay. And did Mr. Hill tell you to make that 15 correction? 16 A. He did. He said, hey, you did have an LEC in 17 your production, and I said I must have missed that, and 18 so I looked at it, and there it is. 19 Q. Okay. And so then the second entry for 20 making -- for the visual communications team making 21 exhibits, what was that? Because that was after the LEC? 22 A. Right. So the first time they did it was that, 23 and then the second time they did, they went back through 24 the original PowerPoint and added what they felt was new 25 information, which wasn't.</p>

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<p style="text-align: right;">Page 106</p> <p>1 They always add, like, the police report -- I'm  2 sorry, the police diagram, which I don't need, and so I  3 always take those out. They sometimes add some diagrams  4 of where -- like, if there's a skull fracture in the  5 temporal area, they'll put in a picture of what the  6 temporal area means. I don't need that.  7 So these are things I take out, so there  8 actually was nothing new that I needed for the second  9 one, so there is no second PowerPoint.  10 Q. Okay. Then January 30, 2024, visual  11 communications time, what was that?  12 A. That is the second one that I was just talking  13 about.  14 Q. Okay. So they went into a your PowerPoint like  15 eight months later and just made changes to it?  16 A. Well, because we had another call coming up that  17 we talked about at some point in January something, and  18 so they went back in and said, hey, here's new stuff.  19 Here's something you might need, and I said so no, I  20 really don't, but thank you.  21 Q. Okay.  22 THE WITNESS: Keigo, do you a favor. Would you  23 turn that one a smidge this way? This way, clockwise.  24 Perfect. Thank you. Thanks for your patience with that.  25 BY MS. CANNELLA:</p>	<p style="text-align: right;">Page 108</p> <p>1 February 23rd; is that correct?  2 A. Correct.  3 Q. All right. So what -- why did you -- what kind  4 of contact did you have with the client where you would  5 use a PowerPoint?  6 A. Honestly, I don't believe those calls on the  7 19th and 23rd would have required a PowerPoint, but the  8 visual communications guys, to their credit, always want  9 me to be ready for anything, and so whenever there's  10 contact with the client coming up, they always make sure  11 that everything is ready for me in terms of PowerPoints,  12 if I want to show them.  13 I didn't. And I didn't need to change anything  14 from the previous one, but if I had, I would have been  15 ready.  16 Q. Okay. And so the PowerPoint that we have is  17 from the LEC, that's as it existed at the LEC; correct?  18 A. Yes. And still exists today, there hasn't been  19 an update to it.  20 Q. And now that you know that you did an LEC, do  21 you recall if anybody did a PowerPoint at the LEC? Do  22 you recall anybody else doing presentations at the LEC?  23 A. I don't, but they certainly may have, but I  24 don't remember.  25 Q. Did you usually do PowerPoints for LECs?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. All right. So when you did -- it looks  2 like the -- if you go to page 20 of your bills, put that  3 up on the screen, the visual communications exhibit  4 preparation occurs on January 30, 2024, January 31, 2024,  5 and then the visual communications person looks like they  6 attend on January 30, 2024, the technical conference;  7 correct?  8 A. So that still doesn't make any sense to me  9 unless they're talking about making exhibits for the  10 technical conference, but then that would be the exhibit  11 preparation, so I can't understand that billing because  12 the visual communications guys did not come to any calls  13 with me, so I don't really understand that. I can't  14 explain that.  15 Q. Okay. And then if you scroll down, your time  16 contact with the client then was this point that happened  17 after this visual communication exhibit preparation, the  18 next time spend time on the case, as far as I can tell,  19 is in February; correct?  20 A. Yes.  21 Q. And your February time, it looks like the only  22 time you could have used -- correct me if I'm wrong, but  23 it looks like the only time you would have used the new  24 PowerPoint or the amended PowerPoint or PowerPoint at all  25 is February 19th in contact with clients on</p>	<p style="text-align: right;">Page 109</p> <p>1 A. It depends. I mean, more than 50 percent of the  2 times, yeah, probably, but there's a lot of times I don't  3 or nobody does.  4 Q. Okay. Have you ever been in a dispute where --  5 or in a case where there was a dispute about an  6 aftermarket product?  7 A. Yes.  8 Q. And what were those cases?  9 A. Hmm, the only one I remember off the top of my  10 head, but I may as I go on, is Shelly Mott versus FCA.  11 Q. Uh-uh, and what was the product?  12 A. I think a lower control arm, but I could be  13 wrong because, certainly, that has nothing to do with my  14 area, so I could certainly be saying that wrong.  15 Q. Okay. And this lower control arm is part of the  16 OEM design; correct? It was just an additional -- it was  17 a piece made by an aftermarket manufacturer?  18 A. I mean, yeah. You buy a truck with a control  19 arm, a lower control arm, for sure, but I think whatever  20 the part was, I think it was a lower control arm, but  21 whatever the part was was put on to replace the OE part,  22 as I recall. Again, that's not my area, so I could be  23 wrong.  24 Q. Okay. Any other cases you remember where  25 there's an aftermarket product involved?</p>



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<p>1 A. Hold that thought. Kathleen Ditter versus</p> <p>2 Subaru had some non OE items that affected her seated</p> <p>3 position, but they weren't like suspension parts at all.</p> <p>4 They were like seat cushions and things like that.</p> <p>5 Q. Okay. And what was your opinion in that case?</p> <p>6 A. Ms. Ditter received her facial injuries as a</p> <p>7 result of her phone striking her face.</p> <p>8 Q. Okay. And so the aftermarket products were not</p> <p>9 a part of the cause of her injury?</p> <p>10 A. Whether or not she had the seat cushions, she</p> <p>11 would have been seated a little bit differently, but it</p> <p>12 would not have changed her injury outcome.</p> <p>13 Q. Okay. Any other cases you can recall that you</p> <p>14 used -- that involved an aftermarket product at issue?</p> <p>15 A. Not that I can think of.</p> <p>16 Q. I'm going to show you what I've marked as</p> <p>17 Plaintiff's Exhibit 19, which is your fee schedule. Do</p> <p>18 you see that on the screen?</p> <p>19 A. Yes.</p> <p>20 Q. Your rate is about \$700 an hour; correct?</p> <p>21 A. It is now, yes.</p> <p>22 Q. And when somebody hires you, they make payments</p> <p>23 to BRC; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the same hourly rate applies to work and</p>	<p>1 Let's talk about your time at Ford briefly. You</p> <p>2 were at Ford for six years; correct?</p> <p>3 A. I was.</p> <p>4 Q. And you were a test engineer?</p> <p>5 A. For the first two years, yes, and then years</p> <p>6 three through six, development engineer.</p> <p>7 Q. Did you do any work on structural integrity?</p> <p>8 A. Yes. When I was a test engineer, but it was --</p> <p>9 Q. Can you explain -- go ahead.</p> <p>10 A. But it was durability, certainly not crash</p> <p>11 worthiness.</p> <p>12 Q. Can you explain your work as a test engineer at</p> <p>13 Ford?</p> <p>14 A. Yes. It was two years. It was a two-year</p> <p>15 program. For six months I did emissions testing,</p> <p>16 both evaporative and tailpipe emissions. For six months</p> <p>17 I did electrical testing, which was, like, how bright</p> <p>18 headlamps and tail lamps are. For six months I did the</p> <p>19 structural testing on trucks, heavy trucks, and passenger</p> <p>20 vehicles for durability in various climates of structural</p> <p>21 components. And last, I did heavy truck durability and</p> <p>22 engine performance testing.</p> <p>23 Q. Can you give us an example of a durability test</p> <p>24 you would do?</p> <p>25 A. On a heavy truck, the vehicles were -- the</p>
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<p>1 travel, deposition, and trial; correct?</p> <p>2 A. Yes. Whatever my rate is at that time, whatever</p> <p>3 I'm doing is the same rate.</p> <p>4 Q. And do you agree the only person with a bill</p> <p>5 rate higher than you at BRC is Thomas McNish?</p> <p>6 A. Other than radiologists, orthopedists,</p> <p>7 cardiologists, I'm not sure about neurology, they all</p> <p>8 bill more than my rate.</p> <p>9 Q. Do you agree that on BRC's consultant hourly</p> <p>10 billing rates on Plaintiff's Exhibit 19, the only person</p> <p>11 with a higher billing rate than you is Thomas McNish?</p> <p>12 A. I do agree with that.</p> <p>13 Q. Okay. I'm also going to show you what I've</p> <p>14 marked as Plaintiff's Exhibit 31, which we discussed</p> <p>15 earlier. And that is the bill totals in the case.</p> <p>16 Do you see Plaintiff's Exhibit 31 on the screen?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And does this look like an accurate</p> <p>19 estimate or accurate accounting of what you have charged</p> <p>20 in the case?</p> <p>21 A. I don't know by looking at it. I would have to</p> <p>22 look at each bill. Do you need me to do that?</p> <p>23 Q. Let's not do it right now, but if you see any</p> <p>24 problems with it during the break, that would be great if</p> <p>25 you could let us know.</p>	<p>1 heavy -- the trucks, the frames, and body components and</p> <p>2 some suspension components like leaf springs, were</p> <p>3 instrumented with strain gauges and then sprayed with</p> <p>4 salt water, baked in the sun, and then driven around a</p> <p>5 track and driven on a durability route, a very bumpy</p> <p>6 route that would twist the frame a lot.</p> <p>7 And then photos were taken and strain gauge</p> <p>8 measurements were taken to determine -- and then</p> <p>9 ultimately determining the life of various parts like the</p> <p>10 frames and leaf springs, et cetera, after many, many</p> <p>11 iterations of that testing.</p> <p>12 Q. Can you explain what you did as a development</p> <p>13 engineer at Ford?</p> <p>14 A. Yes. So years three through six I was a fuel</p> <p>15 systems development engineer, and so I was responsible</p> <p>16 for current and past model years of the F-Series trucks</p> <p>17 as well as some Rangers and some Econoline Vans and</p> <p>18 Broncos, all the Broncos because it's an F-Series truck,</p> <p>19 essentially.</p> <p>20 And so if an assembly plant or a dealership had</p> <p>21 trouble building the fuel system on one of those trucks</p> <p>22 or the -- a dealership had problems repairing a fuel</p> <p>23 system on one of those trucks, and the hotline couldn't</p> <p>24 help them, then I would go to the dealership or the</p> <p>25 assembly plant and fix the problem.</p>

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<p>1 Q. Okay. Did you run crash tests at Ford when you</p> <p>2 worked there?</p> <p>3 A. No.</p> <p>4 Q. And rear crash tests are part of the fuel</p> <p>5 systems development; correct?</p> <p>6 A. No. Fuel system design, and I know it's a tight</p> <p>7 rope there, but that's how Ford describes it. So the</p> <p>8 design guys design, and 301 Testing is part of that, but</p> <p>9 once it goes into production, then it becomes a</p> <p>10 development engineer's job, mine at the time, and so 301</p> <p>11 was already done.</p> <p>12 Q. If Ford made a change to the structure of a</p> <p>13 vehicle, would it run testing to make sure the design</p> <p>14 still met safety standards?</p> <p>15 MR. HILL: Object to the form.</p> <p>16 THE WITNESS: I don't know, not my area.</p> <p>17 BY MS. CANNELLA:</p> <p>18 Q. Did Ford and its engineers look for structural</p> <p>19 engagement in car-to-car crashes that it did in-house?</p> <p>20 A. I have no idea, not my area at all.</p> <p>21 Q. Does Ford consider structural engagement</p> <p>22 important in crashes?</p> <p>23 MR. HILL: Object to the form.</p> <p>24 THE WITNESS: That was not my area at all. I</p> <p>25 have no idea. I imagine they do, but I have no idea.</p>	<p>1 a car provided adequate protection to the occupants</p> <p>2 inside; correct?</p> <p>3 A. Right. That would be a design-type question.</p> <p>4 Q. Do you have an opinion about whether there was</p> <p>5 differences in the engagement of the frame rails in the</p> <p>6 subject crash versus the crash test?</p> <p>7 A. That is a Mr. Grimes question.</p> <p>8 Q. So you don't have any opinions about that?</p> <p>9 A. Correct.</p> <p>10 Q. You don't have any opinions in anything that's</p> <p>11 different about the structure in one crash versus the</p> <p>12 other; is that correct?</p> <p>13 A. The structure? I mean, one -- so you're talking</p> <p>14 about the Exponent test versus the actual crash?</p> <p>15 Q. Correct.</p> <p>16 A. I mean, what's different is a lift kit or no</p> <p>17 lift kit. That's --</p> <p>18 Q. But you don't have any -- sorry. Go ahead.</p> <p>19 A. Sorry. I took I a longer breath.</p> <p>20 I mean, that's the difference. As far as my</p> <p>21 opinions, my understanding, you know, how the bumper</p> <p>22 structure of the F250 interacted with the bumper</p> <p>23 structure of the Ford Escape is definitely a Wes Grimes</p> <p>24 question.</p> <p>25 I have a general idea, and I know that the F250</p>
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<p>1 BY MS. CANNELLA:</p> <p>2 Q. Did the Ford Escape structure perform reasonably</p> <p>3 well from a biodynamic standpoint in the subject crash?</p> <p>4 MR. HILL: Object to the form. Go ahead.</p> <p>5 THE WITNESS: I have no opinion about</p> <p>6 structures.</p> <p>7 BY MS. CANNELLA:</p> <p>8 Q. Did the Ford Escape perform well for the</p> <p>9 occupants inside in the subject crash?</p> <p>10 A. I have no design opinions at all.</p> <p>11 Q. Okay. But that's -- I'm asking about whether</p> <p>12 you think it performed well for the occupants and their</p> <p>13 movement and injuries?</p> <p>14 MR. HILL: Object to the form. Go ahead.</p> <p>15 THE WITNESS: Right. But performing well is</p> <p>16 about designs, and I have no opinions about designs.</p> <p>17 BY MS. CANNELLA:</p> <p>18 Q. Did the Ford offer adequate protection to the</p> <p>19 occupants in the subject crash?</p> <p>20 MR. HILL: Same objection.</p> <p>21 THE WITNESS: I think it's really the same</p> <p>22 question, and so that would also be more of a design</p> <p>23 question than a biomechanical opinion at all.</p> <p>24 BY MS. CANNELLA:</p> <p>25 Q. So it's not within your expertise to say whether</p>	<p>1 rode up over the bumper structure of the Ford Escape, but</p> <p>2 really that's just because I saw the test and saw the</p> <p>3 results of the test. Mr. Grimes would be able to discuss</p> <p>4 that with expert opinions.</p> <p>5 Q. Are you going to give any expert opinions at</p> <p>6 trial about differences in what happened to the structure</p> <p>7 from the crash test to the subject test?</p> <p>8 A. Not other than what it has to do with the</p> <p>9 occupants, and we've already talked about that at the</p> <p>10 great length at the very beginning of the deposition.</p> <p>11 Q. Okay. So nothing beyond what we've talked</p> <p>12 about?</p> <p>13 A. Correct.</p> <p>14 Q. Do you agree design at Ford was a big</p> <p>15 undertaking?</p> <p>16 MR. HILL: Object to form.</p> <p>17 THE WITNESS: I don't know anything about design</p> <p>18 at Ford other than my interaction regarding fuel systems</p> <p>19 on certain trucks, and I'm not sure what a big</p> <p>20 undertaking means. Like, I don't know how to define</p> <p>21 that, so I don't know.</p> <p>22 BY MS. CANNELLA:</p> <p>23 Q. Have you seen, like, the Ford documents, the big</p> <p>24 long documents with all the standards for performance and</p> <p>25 the different specifications for each component and each</p>

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<p style="text-align: right;">Page 118</p> <p>1 system?</p> <p>2 A. For the Ford Escape, the 2008 or whatever it was</p> <p>3 Ford Escape, no.</p> <p>4 Q. No, just any Ford.</p> <p>5 A. I mean, I've seen in my career way back when,</p> <p>6 which is arguably a really long time ago, drawings and</p> <p>7 specifications for certain parts, yes.</p> <p>8 Q. Oh, I'm talking about, like, the big books that</p> <p>9 have all the performance requirements and the different,</p> <p>10 you know, specs and procedures and stuff, testing</p> <p>11 procedures and that kind of thing. Have you seen --</p> <p>12 A. I've never seen such a thing.</p> <p>13 Q. Okay. Does Ford have extensive testing</p> <p>14 procedures in your experience for its vehicles?</p> <p>15 MR. HILL: Object to the form. Go ahead.</p> <p>16 THE WITNESS: In my experience I didn't -- I</p> <p>17 wasn't involved in testing at all, so I have no</p> <p>18 experience with that.</p> <p>19 BY MS. CANNELLA:</p> <p>20 Q. Did Ford do design failure mode analysis</p> <p>21 documents?</p> <p>22 A. In general, I mean, I learned about FMEA when I</p> <p>23 was there a long time ago. I was never involved in</p> <p>24 design, so that wasn't part of it my area, but in</p> <p>25 general, yes, but I don't know about the subject</p>	<p style="text-align: right;">Page 120</p> <p>1 I've seen enough FMEA documents ever in my career at</p> <p>2 Ford, other than when I did a class, which was -- we</p> <p>3 learned about ceiling -- like, we did a practice on</p> <p>4 ceiling fans, so it had nothing to do with automotive at</p> <p>5 all.</p> <p>6 So I don't think I've ever seen them at Ford,</p> <p>7 and I don't think I've ever seen an FMEA in any of my</p> <p>8 cases in litigation since my time at Ford.</p> <p>9 BY MS. CANNELLA:</p> <p>10 Q. Well, I know we've had a case together, and</p> <p>11 there is one in our case, so certainly you've seen them</p> <p>12 in some cases; correct? I've never seen them. Is that</p> <p>13 correct?</p> <p>14 A. I don't know. Not that I recall.</p> <p>15 Q. Okay. Is that something you would normally look</p> <p>16 for in your cases?</p> <p>17 A. No. Because that's a design issue. Those are</p> <p>18 design people that use those tools.</p> <p>19 Q. So it's not your testimony that they didn't</p> <p>20 exist in your prior cases, it's that you just didn't see</p> <p>21 them in your prior cases; correct?</p> <p>22 A. Correct. I've never seen them that I'm aware</p> <p>23 of. If you showed me one in a deposition before, I</p> <p>24 certainly don't remember it.</p> <p>25 Q. Do you -- have you seen any FMEAs that</p>
<p style="text-align: right;">Page 119</p> <p>1 vehicles.</p> <p>2 Q. What is an FMEA?</p> <p>3 A. Failure mode effects analysis.</p> <p>4 Q. And what does it do?</p> <p>5 A. In general, certainly I'm no expert at FMEA, but</p> <p>6 in general, it spurs design engineers to think of</p> <p>7 potential failure modes of a widget, and then determine</p> <p>8 how likely that failure mode is and how bad it is if it</p> <p>9 does happen, and then categorize them by likelihood and</p> <p>10 severity.</p> <p>11 Q. And they put numbers on those categories; right?</p> <p>12 It's usually 1 to 10?</p> <p>13 A. I don't remember what the numbers are, but sure,</p> <p>14 they rank them somehow. I don't know if it's letters or</p> <p>15 numbers. I don't remember. It's been a long time ago.</p> <p>16 Q. And as part of FMEA engineers identify the</p> <p>17 solution, potential solutions, to the failure; correct?</p> <p>18 MR. HILL: Object to form. Go ahead.</p> <p>19 THE WITNESS: If they can, yes. I mean, that's</p> <p>20 the goal of FMEA work.</p> <p>21 BY MS. CANNELLA:</p> <p>22 Q. And FMEAs are very standard things to see in</p> <p>23 manufacturing and the auto industry; do you agree?</p> <p>24 MR. HILL: Object to the form.</p> <p>25 THE WITNESS: Oh, I have no idea. I don't think</p>	<p style="text-align: right;">Page 121</p> <p>1 Rough Country did?</p> <p>2 A. No.</p> <p>3 Q. To your knowledge, did Rough Country do any</p> <p>4 safety testing of its product before this lawsuit was</p> <p>5 filed?</p> <p>6 A. Oh, I have no idea. I wouldn't know one way or</p> <p>7 the other.</p> <p>8 Q. You wouldn't ask for safety testing as part of</p> <p>9 your investigation?</p> <p>10 A. No. That's not my area at all.</p> <p>11 Q. Okay. To your knowledge, did RC do any testing</p> <p>12 that explored the effects of its list when the vehicles</p> <p>13 were involved in crashes?</p> <p>14 A. Not that I'm aware of, but I wouldn't know those</p> <p>15 things really. That wouldn't be part of my investigation</p> <p>16 or my analysis.</p> <p>17 Q. Did Rough Country provide you with any internal</p> <p>18 testing that it did at all?</p> <p>19 A. No.</p> <p>20 Q. Did you ask if Rough Country did any internal</p> <p>21 testing?</p> <p>22 A. No. Because again, that wouldn't be part of my</p> <p>23 area or anything that I would look at or analyze.</p> <p>24 Q. If Rough Country did crash simulations or crash</p> <p>25 tests, you wouldn't look at those?</p>

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<p style="text-align: right;">Page 122</p> <p>1 A. I don't think so.</p> <p>2 Q. Who paid for your Wayne State degree?</p> <p>3 THE REPORTER: Sorry. Was it Wayne State?</p> <p>4 THE WITNESS: Me.</p> <p>5 Yeah, Wayne State, W-a-y-n-e.</p> <p>6 BY MS. CANNELLA:</p> <p>7 Q. Okay. So on your experience -- let me just see</p> <p>8 if I had any questions about that.</p> <p>9 Have you done any in person physician work since</p> <p>10 2016?</p> <p>11 A. Yes.</p> <p>12 Q. And what was that?</p> <p>13 A. I volunteer periodically at a homeless clinic in</p> <p>14 Cheyenne, Wyoming.</p> <p>15 Q. Okay. And what kind of care do you provide</p> <p>16 there?</p> <p>17 A. Like, family practice and urgent care. It's</p> <p>18 taking care of people, homeless folks or folks who are</p> <p>19 under-housed and under-insured or uninsured, taking care</p> <p>20 of their chronic diseases and urgent-type problems.</p> <p>21 Q. Have you done any ER work since 2016?</p> <p>22 A. No.</p> <p>23 MS. CANNELLA: All right. I'm going to</p> <p>24 introduce Plaintiff's Exhibit 16, which is your CV.</p> <p>25 (Whereupon Plaintiff's Exhibit 16 was marked</p>	<p style="text-align: right;">Page 124</p> <p>1 A. It's not a paper. It's a book chapter. The</p> <p>2 primary author is Martin, Julia Martin, and me. And at</p> <p>3 it's "The Multiply Injured Patient."</p> <p>4 So it's about trauma and patients involved in</p> <p>5 trauma with multiple injuries, and certainly</p> <p>6 Master Bryson had multiple injuries, multiple areas of</p> <p>7 his body.</p> <p>8 Q. Okay. Anything else?</p> <p>9 A. Nope.</p> <p>10 Q. All right. All right. Have you reviewed your</p> <p>11 notice of deposition for this case?</p> <p>12 A. Yes.</p> <p>13 Q. And did you bring everything in your file?</p> <p>14 A. Yes. Except the materials that were sent to my</p> <p>15 office from Mr. Hill's office, so regurgitating medical</p> <p>16 records and the radiology and police report and things</p> <p>17 like that, I did not do except as I relied upon them.</p> <p>18 So they're found in my preliminary file summary</p> <p>19 supporting documents and the radiology keys.</p> <p>20 Q. Those are the things in your file? That's what</p> <p>21 you're saying?</p> <p>22 A. Yes.</p> <p>23 Q. Did you produce all your communications with the</p> <p>24 lawyers in this case?</p> <p>25 A. Yes. Except for Zoom that wasn't recorded.</p>
<p style="text-align: right;">Page 123</p> <p>1 for identification.)</p> <p>2 BY MS. CANNELLA:</p> <p>3 Q. And my question is about your publications. Are</p> <p>4 there any papers on your CV that you authored or</p> <p>5 co-authored that are relevant to the issues in this case?</p> <p>6 A. There are two that are tangentially related.</p> <p>7 Q. Okay. And which two are those?</p> <p>8 A. The first one, the primary author is me, Gwin.</p> <p>9 "Measurement of Tolerable and Non injurious Levels of</p> <p>10 Back-to-Front Whole-Body Accelerations."</p> <p>11 And I say it's tangential because, certainly, we</p> <p>12 didn't hurt anyone in our testing, and Master Bryson was</p> <p>13 killed in this crash, so I'm not saying that it was a</p> <p>14 tolerable acceleration that he was exposed to, but we did</p> <p>15 look at measurements of whole-body accelerations in sort</p> <p>16 of simulated rear crashes the way we did our testing, so</p> <p>17 it's pretty tangential, but it is a little related.</p> <p>18 Q. How did you measure the whole-body accelerations</p> <p>19 for that paper?</p> <p>20 A. We measured with accelerometers on the subjects'</p> <p>21 bodies in the lumbar area, upper thoracic, and lower</p> <p>22 cervical area, and the center -- near the center of</p> <p>23 gravity of the head.</p> <p>24 Q. Okay. And what's the other paper that is</p> <p>25 relevant to your testimony in this case?</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. There's no e-mails that were withheld on</p> <p>2 privilege grounds?</p> <p>3 A. Not that I'm aware of. I certainly wouldn't do</p> <p>4 that.</p> <p>5 Q. Okay.</p> <p>6 A. And I don't think Mr. Hill did.</p> <p>7 Q. Okay. I'm going to show you Plaintiff's 17.</p> <p>8 This is your list of file materials. Do you recognize</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And this represents everything in your</p> <p>12 file; correct?</p> <p>13 A. Everything that I've received from Mr. Hill's</p> <p>14 office.</p> <p>15 Q. Oh, all right. And this is comprehensive?</p> <p>16 There's nothing left off of here that Mr. Hill's office</p> <p>17 sent you; correct?</p> <p>18 A. Correct.</p> <p>19 MS. CANNELLA: Okay. I'm going to introduce</p> <p>20 that as Plaintiff's Exhibit 17.</p> <p>21 (Whereupon Plaintiff's Exhibit 17 was marked</p> <p>22 for identification.)</p> <p>23 BY MS. CANNELLA:</p> <p>24 Q. It doesn't say when you received these items.</p> <p>25 Do you have records of when you received these things?</p>

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<p>1 A. No. I certainly have no access to that.</p> <p>2 Probably the paralegal would, but it's certainly not part</p> <p>3 of the file materials.</p> <p>4 Q. But it's documents that exist; correct?</p> <p>5 A. Probably, so the way we used to do it was</p> <p>6 folders, and they had dates on them and folder numbers.</p> <p>7 Now, they're virtual, so probably someplace it's</p> <p>8 documented that way, but not that I have access to or</p> <p>9 would ever look at.</p> <p>10 Q. These things are transmitted via e-mail;</p> <p>11 correct?</p> <p>12 A. Usually or as a link noted in an e-mail. Every</p> <p>13 once in a while we get disks or thumb drives or hard</p> <p>14 drives in the mail or UPS or something like that.</p> <p>15 Q. Okay. Well, those communications are</p> <p>16 discoverable. They're specifically listed in the rules,</p> <p>17 so can we get a copy of all those to show when you were</p> <p>18 receiving materials?</p> <p>19 A. That would be part of correspondence.</p> <p>20 Q. Okay. So you do have a record of when you</p> <p>21 received things then; correct?</p> <p>22 A. I mean, the e-mail will say something like</p> <p>23 Dear Paralegal that's working with Lisa Gwin, please see</p> <p>24 below for a link to Dropbox for materials. But it won't</p> <p>25 say what the list of things are on there, no.</p>	<p>1 A. I mean, just things that are my experience, you</p> <p>2 know, the years of education that certainly I can't put</p> <p>3 into a file, but there's nothing in the file -- there's</p> <p>4 nothing from the file that was withheld or isn't here.</p> <p>5 Q. You've written a report for Federal Court many</p> <p>6 times before; correct?</p> <p>7 A. Probably, yeah.</p> <p>8 Q. All right. And so you're familiar with the</p> <p>9 rules around what has to be involved and included in a</p> <p>10 federal report?</p> <p>11 A. For the most part, yes.</p> <p>12 Q. And does your report contain all that</p> <p>13 information that's required?</p> <p>14 A. I think it does, yes.</p> <p>15 Q. Does it contain a complete statement of all the</p> <p>16 opinions you'll express at trial?</p> <p>17 A. Yes, yes.</p> <p>18 Q. Does it include a complete statement of all the</p> <p>19 bases and reasons for your opinions?</p> <p>20 A. Yes.</p> <p>21 Q. And you didn't leave out any of the support for</p> <p>22 your opinions in your report?</p> <p>23 A. Correct.</p> <p>24 Q. Did it include all the facts and data and</p> <p>25 research you considered in forming your opinions?</p>
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<p>1 Q. Okay. So there's no document that shows when</p> <p>2 you got these things; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Are there any notes that were -- that you</p> <p>5 took that are not in your file?</p> <p>6 A. No.</p> <p>7 Q. Any articles that you considered that are not in</p> <p>8 your file?</p> <p>9 A. None of the articles or book chapters or</p> <p>10 citations or references are in my file. That would</p> <p>11 violate copyright unless it's an open access document,</p> <p>12 but the -- there are no references that I rely upon that</p> <p>13 aren't cited in my bibliography.</p> <p>14 Q. Okay. Can you provide copies of those articles</p> <p>15 if we pay the copyright fee?</p> <p>16 A. Yes. Unless it's a book chapter, and generally</p> <p>17 my understanding is that book chapters don't let you buy</p> <p>18 carpets, you'd have to buy the book.</p> <p>19 Q. Okay. After this deposition, can you give</p> <p>20 Mr. Hill the information about what it would cost to get</p> <p>21 the articles from you guys?</p> <p>22 A. Yes.</p> <p>23 Q. Great. Okay. Aside from the articles, is there</p> <p>24 anything that you're relying on in this case that's not</p> <p>25 in the file that we received?</p>	<p>1 A. Up to the point of my report, yes.</p> <p>2 Q. Do you have any new facts and data or research</p> <p>3 since you wrote your report?</p> <p>4 A. Yes.</p> <p>5 Q. Does it include all your qualifications?</p> <p>6 A. Yes.</p> <p>7 Q. Do you hold any opinions about the case that are</p> <p>8 not covered in your report?</p> <p>9 A. Yes.</p> <p>10 Q. And what are those?</p> <p>11 A. A response, if you will, to Mr. Lewis's</p> <p>12 additional file materials and his deposition.</p> <p>13 Q. Okay. Anything else aside from that?</p> <p>14 A. Not that I'm aware of at the moment, unless or</p> <p>15 until I get more information.</p> <p>16 Q. Can you please walk me through the things that</p> <p>17 you disagree with, the additional opinions you have</p> <p>18 regarding Mr. Lewis and his findings?</p> <p>19 A. Yeah. So, well, I'll take it in two parts. The</p> <p>20 first one is some case -- two cases that apparently</p> <p>21 involved Rough Country that Mr. Lewis worked on in the</p> <p>22 past, Bacho and Mendoza.</p> <p>23 My opinions are that I don't know anything about</p> <p>24 these cases, and so without doing some sort of analysis,</p> <p>25 there's no reason to believe that these two cases have</p>



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<p style="text-align: right;">Page 130</p> <p>1 anything to do with the Bryson case.</p> <p>2 And then the second piece is the two tests that</p> <p>3 were provided that were run for other cases, one was by</p> <p>4 Todd Tracy run a Cal Span, and the other one seems to</p> <p>5 have been run by Dr. Thorbaly at Wichita State.</p> <p>6 And I don't know enough about what was run. It</p> <p>7 seems that the Cal Span was a crash test, I believe,</p> <p>8 where the Wichita State was a sled test. So the sled</p> <p>9 test would be absolutely inapplicable to the Bryson case</p> <p>10 because Master Bryson's injuries were caused by contact</p> <p>11 and intrusion. Therefore, a sled test is completely</p> <p>12 inapplicable.</p> <p>13 Not only that, I think the Delta V was, like, 15</p> <p>14 or something, which is completely lower than our crash,</p> <p>15 the Bryson crash. Other than that, I don't know anything</p> <p>16 about the case that it was run for, so I can't say much</p> <p>17 else about it.</p> <p>18 Regarding the Todd Tracy, which I think was a</p> <p>19 crash test. I don't know -- there's no photos. There's</p> <p>20 no videos, so I don't know what happened inside the</p> <p>21 vehicle that -- I think it was the Mercedes-Benz that was</p> <p>22 struck, although it's not entirely clear, but I think so.</p> <p>23 So I had acceleration measurements for some</p> <p>24 dummies, but I don't know if there was intrusion, and if</p> <p>25 not, then that test is also completely inapplicable to</p>	<p style="text-align: right;">Page 132</p> <p>1 any materials regarding those cases, so no.</p> <p>2 Q. Do you have any opinions about similarity of</p> <p>3 those crashes to this one?</p> <p>4 A. One is a side impact, and this one is not,</p> <p>5 Bryson is not. So other than that, I don't really know</p> <p>6 anything about those crashes in terms of injuries or</p> <p>7 where people were seated, et cetera, other than</p> <p>8 Mr. Lewis's opinions.</p> <p>9 Q. Have you asked Rough Country for any of the</p> <p>10 information, additional information, for those cases?</p> <p>11 A. Not particularly because I would have to do a</p> <p>12 full analysis, and I, you know, would have to see</p> <p>13 vehicles, do vehicle inspections, et cetera, and Rough</p> <p>14 Country, I'm sure, doesn't have any access to vehicles in</p> <p>15 old cases.</p> <p>16 Q. Have you ever been involved in a case that</p> <p>17 involved OSIs, other similar incidences?</p> <p>18 A. I've heard that acronym and yes, although,</p> <p>19 that's usually something I'm not involved in at all, but</p> <p>20 yes, a few cases, I've heard that there were allegedly</p> <p>21 OSIs.</p> <p>22 Q. And isn't it true that when OSIs are an issue in</p> <p>23 a case, the decisions about similarity and notice are</p> <p>24 made from the documents that are available, not from</p> <p>25 vehicle inspections?</p>
<p style="text-align: right;">Page 131</p> <p>1 the Bryson case.</p> <p>2 I don't remember if the Delta V was even</p> <p>3 described, so I really don't know if it's applicable in</p> <p>4 terms of the Delta V or severity of the crash.</p> <p>5 Certainly, the two vehicles are absolutely different and</p> <p>6 have nothing to do with the Bryson crash.</p> <p>7 So, you know, in summary, his -- Mr. Lewis's</p> <p>8 additional materials don't offer us anything in terms of</p> <p>9 support for his opinions that if Mr. Elliott's truck</p> <p>10 didn't have a lift kit, Master Bryson would not have been</p> <p>11 killed.</p> <p>12 Q. Why do you keep calling him Master Bryson</p> <p>13 instead of Cohen?</p> <p>14 A. I'm old. I was taught to call people Mr. and</p> <p>15 Mrs. and be polite to people that I don't know, so when I</p> <p>16 work in litigation, I always call children by Miss or</p> <p>17 Master.</p> <p>18 Q. Okay. Did you look at the information from the</p> <p>19 Mendoza or Bacho cases?</p> <p>20 A. What little I was provided, which I think was</p> <p>21 just Mr. Lewis's reports, I believe.</p> <p>22 Q. And did you look at the information that</p> <p>23 Rough Country produced in this case about those two</p> <p>24 cases?</p> <p>25 A. No. I was not aware that Rough Country produced</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. HILL: Object to the form.</p> <p>2 THE WITNESS: I have no idea. If I were being</p> <p>3 asked if a certain incident were similar to the Bryson</p> <p>4 crash or whatever I'm working on, I would need to do a</p> <p>5 full analysis, which includes medical records, radiology,</p> <p>6 photographs of injuries, photographs of vehicles, crash</p> <p>7 report, depositions, vehicle inspection, et cetera.</p> <p>8 So I don't know if other people can say whether</p> <p>9 something is an OSI, but I certainly couldn't say whether</p> <p>10 something was similar or applicable at all without doing</p> <p>11 an analysis.</p> <p>12 BY MS. CANNELLA:</p> <p>13 Q. And it sounds like you've never been asked to do</p> <p>14 that before; correct?</p> <p>15 A. Right, not my area.</p> <p>16 Q. Okay. Any other critiques of Mr. Lewis's work?</p> <p>17 MR. HILL: Object to the form. Go ahead.</p> <p>18 THE WITNESS: Well, what I answered was since my</p> <p>19 report, so other than what's in my report and what I've</p> <p>20 said, so far if nothing else becomes available, no.</p> <p>21 BY MS. CANNELLA:</p> <p>22 Q. Well, your report says that his analysis is</p> <p>23 incomplete, I think is the word that you used.</p> <p>24 A. Yes.</p> <p>25 Q. Can you give me all the reason why you contend</p>

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<p style="text-align: right;">Page 134</p> <p>1 it's incomplete?</p> <p>2 A. Well, I've outlined this in my report. So first</p> <p>3 of all, he asserted that Master Bryson's head injuries</p> <p>4 were due to contact with the driver's seat, and that is</p> <p>5 erroneous. The skull fracture was a depressed fracture</p> <p>6 indicating a relatively small impact surface, like two</p> <p>7 inches that we tabbed before, which there are none of</p> <p>8 those on the driver's seat.</p> <p>9 Mr. Lewis initially opined that the periorbital</p> <p>10 ecchymosis around Master Bryson's right eye was proof or</p> <p>11 evidence of impact with the driver's seat. I</p> <p>12 understand -- I understood at the time of my report, and</p> <p>13 I understand now, that he corrected that in the</p> <p>14 deposition, in his deposition.</p> <p>15 And like I said a minute ago, most importantly</p> <p>16 that had Mr. Elliott not had a lift kit on his truck,</p> <p>17 Master Cohen's injuries would have been prevented. I</p> <p>18 disagree with that as well.</p> <p>19 Q. Okay. The ecchymosis issue that you just</p> <p>20 mentioned, do you agree he was relying on the medical</p> <p>21 examiner's report, which had an error in it?</p> <p>22 A. Not about that, the medical examiner's report</p> <p>23 had an error in it, but it was unrelated to that, so no.</p> <p>24 Q. Okay. The headrest post of the driver's seat,</p> <p>25 is that -- are those posts each under two inches?</p>	<p style="text-align: right;">Page 136</p> <p>1 would be undamaged, of course, and therefore would not</p> <p>2 help us understand how far forward Master Bryson was</p> <p>3 pushed due to the intruding rear structures in the</p> <p>4 subject crash.</p> <p>5 And so it would really just be photographs of a</p> <p>6 child in a child seat in an undamaged vehicle and</p> <p>7 wouldn't really help us understand what happened. It</p> <p>8 wouldn't add any value.</p> <p>9 MS. CANNELLA: Okay. I'm going to show you a</p> <p>10 photo. What exhibit number am I on? I think we're on</p> <p>11 37. Does that sound right? Anybody keeping track?</p> <p>12 THE WITNESS: I don't think so. Back in the old</p> <p>13 days of stickers it was so much easier, and everyone was</p> <p>14 in the same room.</p> <p>15 Q. MS. CANNELLA: Okay. I'm going to show you a</p> <p>16 photograph from Mr. Lewis's surrogate study. Can you</p> <p>17 circle the area of the car seat that Cohen's head was in</p> <p>18 contact with that caused his -- or where he got his</p> <p>19 injury?</p> <p>20 THE WITNESS: Are we running out of media? Oh,</p> <p>21 okay.</p> <p>22 I could get in the general area, but it's part</p> <p>23 of the polymer under the covering, so this isn't</p> <p>24 certainly the best picture to try to do that.</p> <p>25 BY MS. CANNELLA:</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Like, in length?</p> <p>2 Q. No. In width?</p> <p>3 A. Yes? Yes.</p> <p>4 Q. And do you have any criticisms of Mr. Lewis's</p> <p>5 education?</p> <p>6 A. I don't know anything about his education other</p> <p>7 than he has a Master's degree, but I don't know. I have</p> <p>8 no opinion one way or the other.</p> <p>9 Q. Do you have any criticisms of his</p> <p>10 qualifications?</p> <p>11 A. I mean, the fact that he missed that periorbital</p> <p>12 ecchymosis would be due to a basilar skull fracture,</p> <p>13 rather than impact might be because he's not a physician,</p> <p>14 but I've seen Mr. Lewis come to some very correct</p> <p>15 conclusions as well, so I don't really know. In this</p> <p>16 case I think being a physician might have cleared that</p> <p>17 one problem up.</p> <p>18 Q. Did you do any surrogate testing in this case?</p> <p>19 A. I did not.</p> <p>20 Q. And why not?</p> <p>21 A. It wasn't really necessary in this case.</p> <p>22 Sometimes it is; sometimes it's not.</p> <p>23 Q. And why wasn't it necessary?</p> <p>24 A. Because if -- so surrogate work includes an</p> <p>25 exemplar vehicle, and there is -- an exemplar vehicle</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. Well, we can start with a different one</p> <p>2 if you have one in your photo collection.</p> <p>3 A. Okay. Let me -- looking at my other photo which</p> <p>4 is from my vehicle inspection, it would be in this area</p> <p>5 and including-- oops, I just covered part of the Row 2</p> <p>6 seat, but including the head restraint adjustment knob.</p> <p>7 Q. Can you tell me what photo you're looking at?</p> <p>8 A. The one that you just had on the screen, but I</p> <p>9 was looking at my Vehicle Inspection Photo 17376.</p> <p>10 Q. So you're at the 3/6/23 vehicle inspection?</p> <p>11 A. Yes.</p> <p>12 Q. And you're looking at which photo, 17 --</p> <p>13 A. 376.</p> <p>14 Q. Okay. That photo right there?</p> <p>15 A. Right. And you can see the deformation of the</p> <p>16 polymer, and right in front of that as we were looking at</p> <p>17 the surrogate photo from Mr. Lewis, you could see what's</p> <p>18 in front of that, which is the head restraint knob,</p> <p>19 adjustment knob on the right-hand side.</p> <p>20 Q. Okay. Can you circle the area that you're</p> <p>21 talking about where his head would have impacted?</p> <p>22 A. I just did it on the picture you showed, so it</p> <p>23 would be that head --</p> <p>24 Q. Oh, I'm sorry.</p> <p>25 A. Yeah. That head restraint adjustment knob on</p>



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<p style="text-align: right;">Page 138</p> <p>1 the right.</p> <p>2 Q. Well, can we do it on this one as well?</p> <p>3 A. Well, this is what pushed forward on the seat</p> <p>4 and moved the head restraint adjustment knob forward,</p> <p>5 which hit his head, so no, not exactly. It's all --</p> <p>6 Q. Okay. Wait. I'm confused.</p> <p>7 A. -- stacked up.</p> <p>8 Q. Can you explain to me what -- it's your</p> <p>9 opinion -- what your opinion is that happened, how the</p> <p>10 injury happened?</p> <p>11 A. Yes. The truck comes in, the F250 comes in,</p> <p>12 deforms the liftgate, deforms and breaks whatever's in</p> <p>13 the cargo area, pushing all that forward, pushes the</p> <p>14 Row 2 left seat forward, which rotates counter clockwise.</p> <p>15 The plastic belt guide for the No. 5 belt</p> <p>16 interacts with the child safety seat in the area that</p> <p>17 we're looking at right now, where the deformation is of</p> <p>18 the polymer.</p> <p>19 Right in front of that all being pushed forward</p> <p>20 with all this stuff behind it including a truck is the</p> <p>21 head restraint adjustment knob on the right side, and all</p> <p>22 of that goes into a Master Cohen's head, about his right</p> <p>23 ear, right behind his right ear, causing the depressed</p> <p>24 skull fracture, causing the brain injury, causing the</p> <p>25 basilar skull fracture, causing the atlanto-occipital</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. And is that -- is it your opinion that that area</p> <p>2 there is -- it's shows physical evidence of contact with</p> <p>3 the car seat?</p> <p>4 A. Yes, it does.</p> <p>5 Q. And is it -- can you explain that to me?</p> <p>6 A. Explain what the physical evidence is, you mean?</p> <p>7 Q. Yes, ma'am.</p> <p>8 A. Yeah. The front left corner of that belt guide</p> <p>9 is pushed downward, and there's evidence of loading and</p> <p>10 plastic flow on that polymer.</p> <p>11 Q. Okay. So it's kind of bent down; is that what</p> <p>12 you mean?</p> <p>13 A. That front corner and bent down, yes, and</p> <p>14 there's plastic flow.</p> <p>15 MS. CANNELLA: And we'll mark that annotated</p> <p>16 picture as Exhibit 38.</p> <p>17 (Whereupon Plaintiff's Exhibit 38 marked for</p> <p>18 identification.)</p> <p>19 BY MS. CANNELLA:</p> <p>20 Q. Now let's look at a picture of the front of the</p> <p>21 car seat. Do you have a picture of that deformed area of</p> <p>22 the car seat from the front angle from your vehicle</p> <p>23 inspection?</p> <p>24 A. Not sure. I don't think so. I don't think you</p> <p>25 can really see it from the front because it's on that</p>
<p style="text-align: right;">Page 139</p> <p>1 dissociation and the pontomedullary laceration.</p> <p>2 Q. Okay. So can you circle on the picture in front</p> <p>3 of you where the belt loop is interacting with the car</p> <p>4 seat?</p> <p>5 A. (Witness complies.)</p> <p>6 Q. So the area that you just circled on, we'll call</p> <p>7 it Exhibit 37, is the area where the belt loop on the</p> <p>8 bench seat in the second row pushed against the car seat;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 (Whereupon Plaintiff's Exhibit 37 was marked</p> <p>12 for identification.)</p> <p>13 BY MS. CANNELLA:</p> <p>14 Q. Okay. One second. And then let's look at the</p> <p>15 picture of the backseat to make sure we've got that all</p> <p>16 lined up.</p> <p>17 Do you see a good picture of that in your</p> <p>18 vehicle inspection photos, the second row seat, the belt</p> <p>19 loop? Oh, I see one. I think this is a good one for</p> <p>20 you. Do you see that picture there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Can you circle here what it was that</p> <p>23 interacted with the car seat to cause the deformation you</p> <p>24 just circled on Exhibit 37?</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 141</p> <p>1 folded polymer, so right, yeah, you couldn't see it from</p> <p>2 the front. I can show you where it would be in general</p> <p>3 from the front, but I can't -- you can't see it from the</p> <p>4 front.</p> <p>5 Q. Okay. Which picture would you use to show it in</p> <p>6 general?</p> <p>7 A. Let's do my Vehicle Inspection Photo R0017309.</p> <p>8 Q. This one?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Can you circle the area that</p> <p>11 interacted -- the front of the area that interacted with</p> <p>12 the belt loop, the belt guide?</p> <p>13 A. Nothing on the front of the child safety seat</p> <p>14 interacted with the belt guide. The rear of the child</p> <p>15 safety seated interacted with the No. 5 belt guide, which</p> <p>16 then --</p> <p>17 Q. Sorry. Which area in the front corresponds with</p> <p>18 the area in the back that interacted?</p> <p>19 A. It's right around that seam on the right, right</p> <p>20 behind the right head restraint adjustment.</p> <p>21 MS. CANNELLA: Okay. So we'll mark this</p> <p>22 Plaintiff's Exhibit 39.</p> <p>23 BY MS. CANNELLA:</p> <p>24 Q. And do you -- well, let me strike that.</p> <p>25 What is it that actually hit Cohen and caused</p>

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<p style="text-align: right;">Page 142</p> <p>1 his fracture, his skull fracture?</p> <p>2 A. That head restraint adjustment with the child</p> <p>3 seat behind it, the vehicle seat behind it, the cargo</p> <p>4 items behind it, the truck behind it.</p> <p>5 Q. I'm looking for the thing that actually touched</p> <p>6 his head to cause the fracture?</p> <p>7 A. Right.</p> <p>8 Q. Which thing touched his head?</p> <p>9 A. The head restraint adjustment knob.</p> <p>10 Q. Is that the thing that you have there in blue?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Gotcha.</p> <p>13 MS. CANNELLA: All right. Marking this as</p> <p>14 Plaintiff's Exhibit 49 -- or 39, I'm sorry.</p> <p>15 (Whereupon Plaintiff's Exhibit 39 was marked</p> <p>16 for identification.)</p> <p>17 THE WITNESS: Five minutes to the end of the</p> <p>18 media.</p> <p>19 BY MS. CANNELLA:</p> <p>20 Q. Okay. Did you do anything to determine if</p> <p>21 Cohen's head, if Cohen was tall enough for his head to</p> <p>22 reach that adjustment knob?</p> <p>23 A. Knowing how kids fit in child safety seats with</p> <p>24 my experience made it clear, and then it turns out that</p> <p>25 Mr. Lewis did some surrogate work that showed that that</p>	<p style="text-align: right;">Page 144</p> <p>1 A. No, I don't think that's true.</p> <p>2 Q. All right. Let me ask you this: The headrest</p> <p>3 lever on the child seat always stays above the headrest.</p> <p>4 Do you agree with that?</p> <p>5 A. Yes, just barely. Yes.</p> <p>6 Q. And if we look at Plaintiff's Exhibit 30, which</p> <p>7 is the slide show from your LEC with the lawyers and the</p> <p>8 experts, do you see that on your screen?</p> <p>9 A. Yes.</p> <p>10 Q. The pictures -- or let me go to the injury</p> <p>11 diagram. Oh, this one is good actually.</p> <p>12 Is the arrow in this picture pointing to the</p> <p>13 area that according to you impacted the headrest lever?</p> <p>14 A. So this is a radiology key, so the radiologist</p> <p>15 put an arrow to the general area of the right temporal</p> <p>16 bone saying that there is some general flattening there</p> <p>17 on this AP view or anterior posterior view, saying that's</p> <p>18 the general area of the fracture, but he doesn't see a</p> <p>19 fracture.</p> <p>20 So this is not a great one to look at. The</p> <p>21 better place to look is on the autopsy photos so we can</p> <p>22 see exactly where we're talking about on Master Bryson's</p> <p>23 head.</p> <p>24 Q. Well, so this area on what we're looking at</p> <p>25 right now on Plaintiff's Exhibit 30, which is page 8 of</p>
<p style="text-align: right;">Page 143</p> <p>1 was true.</p> <p>2 Q. You didn't do any measurements; correct?</p> <p>3 A. Correct. I did use my experience, but no, I</p> <p>4 didn't take a tape measurer out and measure anything.</p> <p>5 MS. CANNELLA: Okay. We can take a break and</p> <p>6 switch tapes.</p> <p>7 THE VIDEOGRAPHER: We're going off the record.</p> <p>8 The time is 2:17.</p> <p>9 (Whereupon a short recess break was taken.)</p> <p>10 THE VIDEOGRAPHER: We're back on the record.</p> <p>11 Time is 2:28.</p> <p>12 BY MS. CANNELLA:</p> <p>13 Q. Okay. All right. Dr. Gwin, we just looked at</p> <p>14 the area of the car that impacted the back of the car</p> <p>15 seat, and the area of the car seat that interacted with</p> <p>16 the belt guide on the second row, and then we saw from</p> <p>17 the front the headrest adjustment lever, which is it's</p> <p>18 your opinion that that's what impacted Cohen's skull and</p> <p>19 caused the skull fracture; correct?</p> <p>20 A. Yes. And the other constellation of injuries</p> <p>21 that I said before.</p> <p>22 Q. Okay. And the AO dislocation as well?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree that an AO dislocation requires</p> <p>25 opposing forces?</p>	<p style="text-align: right;">Page 145</p> <p>1 the PDF, this is not a arrow pointing to where the impact</p> <p>2 was; correct?</p> <p>3 A. No. It's an arrow pointing to mild flattening</p> <p>4 of the inferior temporal surface of the right skull.</p> <p>5 Q. Okay. Can you -- let's see, can you show us on</p> <p>6 this picture where the impact with the harness adjustment</p> <p>7 levers was?</p> <p>8 A. No.</p> <p>9 Q. You can't see it on this picture?</p> <p>10 A. Correct.</p> <p>11 Q. How about on this picture?</p> <p>12 A. No.</p> <p>13 Q. This picture?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. So we know there's an abrasion behind his ear.</p> <p>17 There's ecchymosis of the ear pinna, itself, so in that</p> <p>18 general area. And then when Dr. Eisenstat did the scalp</p> <p>19 reflection, we can see even better where it is.</p> <p>20 Q. Okay. Can you circle on the screen in front of</p> <p>21 you where the impact is with the adjustment harness</p> <p>22 levers?</p> <p>23 A. Well, like I said, it's the general area, so</p> <p>24 it's behind his year and his ear.</p> <p>25 MS. CANNELLA: Okay. Great. And we'll mark</p>

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<p style="text-align: right;">Page 146</p> <p>1 this as Exhibit -- all right.</p> <p>2 THE REPORTER: Sorry. What was the exhibit,</p> <p>3 Counsel?</p> <p>4 MR. HILL: Yeah, what number, Counsel?</p> <p>5 MS. CANNELLA: I don't know yet. Hold on.</p> <p>6 Plaintiff's Exhibit 40.</p> <p>7 (Whereupon Plaintiff's Exhibit 40 was marked</p> <p>8 for identification.)</p> <p>9 BY MS. CANNELLA:</p> <p>10 Q. All right. And did you take any measurements to</p> <p>11 see how far this area of Cohen's head would have been</p> <p>12 from the headrest adjustment knob?</p> <p>13 A. No.</p> <p>14 MS. CANNELLA: Rick, I wanted to mention to you</p> <p>15 I don't have any communications. I've double-checked</p> <p>16 while we were -- while we broke.</p> <p>17 THE WITNESS: Like correspondence?</p> <p>18 MS. CANNELLA: Correct. Can somebody send those</p> <p>19 to us real quick before we end today?</p> <p>20 MR. HILL: What do you mean by "correspondence"?</p> <p>21 You mean, like an e-mail from our office that sends a</p> <p>22 file link or something?</p> <p>23 MS. CANNELLA: All e-mails that are discoverable</p> <p>24 under Rule 26, which includes any e-mails about payment,</p> <p>25 assumptions, or facts.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Okay.</p> <p>2 A. Well, I'm sorry. Trial exhibits.</p> <p>3 Q. All right. What kind of trial exhibits do you</p> <p>4 think you'll do?</p> <p>5 A. A PowerPoint, I usually start with the LEC</p> <p>6 PowerPoint, and then if there's anything that it's become</p> <p>7 clear that is -- that needs more demonstration for a</p> <p>8 jury, I'll put those in there, slides in there to show</p> <p>9 that, things like that.</p> <p>10 Q. Okay. All right. One moment. Let's see what</p> <p>11 else we got.</p> <p>12 All right. I'm going to show you Plaintiff's</p> <p>13 Exhibit 28, and it is a radiologist PowerPoint. Can you</p> <p>14 see that from your file?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Who prepared this?</p> <p>17 A. Dr. Hernandez.</p> <p>18 Q. All right. And is this exerted in the LEC</p> <p>19 presentation we just looked at?</p> <p>20 A. Yes.</p> <p>21 Q. All right. This slide right here talks about</p> <p>22 capacity of the left lung. Is anything here relevant to</p> <p>23 your opinion?</p> <p>24 A. No.</p> <p>25 Q. Do you have any opinion about why his trachea</p>
<p style="text-align: right;">Page 147</p> <p>1 MR. HILL: All right. I don't know if we'll be</p> <p>2 able to get that today, but we'll certainly if there are</p> <p>3 any such things, and you want to ask her about it, we can</p> <p>4 all agree to a Zoom deposition where you can ask her</p> <p>5 those questions.</p> <p>6 I don't know if we could get that accomplished</p> <p>7 today. We just produced the file that she produced that</p> <p>8 she had maintained -- we didn't search our own outgoing</p> <p>9 e-mail from when we sent her documents.</p> <p>10 MS. CANNELLA: Okay. Okay. If we could get</p> <p>11 that stuff, that would be great, and then, hopefully, we</p> <p>12 won't need to do anything else, but we do appreciate the</p> <p>13 offer.</p> <p>14 MR. HILL: Or we -- you know, if you want to --</p> <p>15 if it's just to determine the date that she received</p> <p>16 certain things, we could provide that in way of a</p> <p>17 document or whatever you want.</p> <p>18 MS. CANNELLA: Yeah. No, I would rather have</p> <p>19 the actual communications.</p> <p>20 MR. HILL: Sure.</p> <p>21 BY MS. CANNELLA:</p> <p>22 Q. Let's see if there's anything else here.</p> <p>23 Are you planning on doing any additional work in</p> <p>24 the case?</p> <p>25 A. Not as I sit here today.</p>	<p style="text-align: right;">Page 149</p> <p>1 deviated to the right?</p> <p>2 A. Well, as it says there, likely it's the thymus,</p> <p>3 the -- kids have really big thymusses, or thymi, if</p> <p>4 that's the plural in Latin or something, but kids have</p> <p>5 really big thymusses, and so oftentimes they obscure</p> <p>6 chest X-rays and can push tracheas one way or the other.</p> <p>7 You know, the other things we'd have to rule out</p> <p>8 with a deviated trachea would be, you know, like a</p> <p>9 pulmonary injury or something which Dr. Eisenstat found</p> <p>10 no evidence of, so it's likely the thymus.</p> <p>11 Q. Okay. Anything on this slide that relevant to</p> <p>12 your opinion on the case?</p> <p>13 A. No.</p> <p>14 Q. Okay. How about this one, page 8, Plaintiff's</p> <p>15 Exhibit 28?</p> <p>16 A. Not -- no, no.</p> <p>17 Q. Okay. How about page 9?</p> <p>18 A. Well, yeah. I mean, he has a -- fractures of</p> <p>19 his left radius and ulna. So that's important. Every</p> <p>20 injury is important. It certainly did not cause</p> <p>21 Master Bryson's death or contribute to his death, but</p> <p>22 every injury is important, and I analyze them all.</p> <p>23 Q. How do you think he got this arm injury?</p> <p>24 A. Like I said before, all of his extremity</p> <p>25 injuries likely are interaction with the driver seat</p>

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<p style="text-align: right;">Page 150</p> <p>1 back, driver's seat back.  2 Q. And is this an injury you can get by putting  3 your hand up in the driver's seat coming back toward you?  4 A. Not usually. And I guess I should add too  5 certainly his left arm injuries, these injuries could be  6 caused by interaction with the Row 2 left door, the left  7 rear door as well.  8 But no, typically these aren't bracing injuries.  9 They're not generally midshaft fractures when they're  10 bracing injuries like you demonstrated.  11 Q. Where does a bracing injury usually happen?  12 A. At the wrist, typically.  13 Q. Did he have any injuries on his wrist?  14 A. He did not.  15 Q. All right. How about page 11 on Exhibit 28?  16 Oh, you're breaking up. Did somebody say  17 something?  18 A. No. I'm looking at what's here. So the right  19 panel shows the right distal tib/fib fractures. And all  20 injuries are important, and I analyze them. Those likely  21 occurred due to interaction with the driver's seat.  22 Q. Are those down near his ankle?  23 A. Yes.  24 Q. And how about page 12?  25 A. Same thing, we're looking at the distal tib/fib</p>	<p style="text-align: right;">Page 152</p> <p>1 the PowerPoint.  2 Q. Is the mild flattening in the same area that the  3 fracture -- the skull fracture is?  4 A. Well, that's the big question. So all we have  5 is an AP view, and it's an X-ray, not a CT scan. So you  6 can't tell a location. You can only tell a location left  7 to right on an AP view.  8 Q. Uh-huh.  9 A. So that's why Dr. Hernandez said I don't know if  10 this is related to the fracture or not. The fracture is  11 kind of behind his ear, as we can see on the photographs  12 of the autopsy, and you can't tell on just an AP any  13 depth.  14 Q. Okay. Do you believe it's -- it's related --  15 the mild flattening is related to the fracture?  16 A. I don't know. The only way to know would be to  17 have an X-ray of Master Bryson's head before this  18 incident to know if that's just his skull or if it's  19 related to the injury.  20 Q. Okay. So it's possible the mild flattening is  21 just normal kid stuff; correct?  22 A. Well, normal for him maybe. Who knows? We  23 can't tell.  24 Q. Okay. I'm going to show you what I've marked as  25 Plaintiff's Exhibit 27. Can you see that?</p>
<p style="text-align: right;">Page 151</p> <p>1 fractures.  2 Q. Nothing new here?  3 A. Correct.  4 Q. How about page 13?  5 A. Yes. So on the left panel we see his femur  6 fracture, and on the right panel we see the intraosseous  7 needle in his left tibia.  8 Q. Okay. How do you think he got the femoral  9 fracture?  10 A. Due to the interaction with the driver's seat  11 back.  12 Q. How does that work? How does the driver's seat  13 back hit his high thigh or cause a fracture in his thigh?  14 A. Femur fractures in car wrecks are not always,  15 but typically caused by an axial load on the femur. So  16 through the knee upward into -- toward the pelvis.  17 And so as he's being pushed forward into a --  18 he's being pushed -- his seat and he are being pushed  19 forward. Then his knee can interact with the driver's  20 seat back and transmit that force axially, which is  21 typically what fractures a femur.  22 Q. Is there anything on this page that is  23 particularly important to your cause of death opinion?  24 A. I mean, it's all the radiology impressions, so  25 yes, as it summarize everything we just talked about in</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Yes.  2 Q. Okay. And that is the radiology report;  3 correct?  4 A. Yes.  5 Q. All right. And I want to show you what I've  6 marked as Plaintiff's Exhibit 32 as well. Do you see  7 that photo from your file?  8 A. Yes.  9 Q. And this is the backseat of the Escape after the  10 Exponent crash test; correct?  11 A. I believe so, yes.  12 Q. So this is Exhibit 32, and is it your opinion  13 that this amount of deformation would be enough to cause  14 the same injury to Bryson Cohen?  15 A. Yes.  16 Q. Do you agree that the back seat has left  17 deformation in the Exponent test than it did in the  18 subject crash?  19 A. Yes.  20 Q. Okay. And then -- let's see here, we have some  21 notes from you that I'm not quite able to read.  22 A. We go to school just for that. There's a whole  23 class in med school of how to write so no one can read  24 it.  25 Q. I bet.</p>

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<p>1 MS. CANNELLA: I'm going to put them in the 2 record as Plaintiff's Exhibit 29. 3 (Whereupon Plaintiff's Exhibit 29 was marked 4 for identification.) 5 BY MS. CANNELLA: 6 Q. I want to make sure you recognize them before I 7 do that. Are these your notes from your file? 8 A. Yes. Five pages? 9 Q. Yes, ma'am. 10 A. Yes. 11 Q. Okay. And I'm also going to show you 12 Plaintiff's Exhibit 36. Can you see that, "History 13 List"? 14 A. Yes. 15 Q. Was that accurate as of December 2015? 16 A. Oh, gosh. I don't know. It's too small to see 17 that. I just recognize the testimony list from BRC. 18 That's what it says, so yes. 19 Q. Okay. You just started testifying in September. 20 It looks like you testified once in September 2013, and 21 then didn't testify again for over a year till 22 December 2014; correct? 23 A. Yes. 24 Q. Okay. All right. I made a contact sheet of 25 your photos so we don't have to number them individually,</p>	<p>1 it not matter? 2 A. In this case it doesn't matter because there's 3 no allegation of interaction, and I agree that there's no 4 interaction between any of the three people in the 5 vehicle. 6 Q. And do you agree that Mr. Bryson didn't receive 7 a serious injury? 8 A. My understanding from his deposition is that he 9 received a concussion, which these days is received as 10 a -- perceived as a lot more serious than they used to 11 be. 12 Q. Do you agree his only injury was a concussion? 13 A. I have no way of knowing. I can only go with 14 what he said in his deposition. I feel like he said 15 something about his back too, but I don't recall. I can 16 look at my report to make sure. 17 Do you want me to do that? 18 Q. Do you agree that Mrs. Bryson was not seriously 19 injured? 20 A. Yes, that's my understanding. I don't agree or 21 disagree. I just -- that's my understanding. 22 Q. And as far as you know, Chandler Bryson, who was 23 unborn at the time of the wreck, he did not suffer a 24 serious permanent injury; correct? 25 A. I have no idea. I know he was born really</p>
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<p>1 marked as plaintiff's Exhibit 26. Starts at R17592, and 2 it goes 11 pages to Exhibit R17591; correct? 3 A. That looks right. 4 Q. All right. And does that look like a complete 5 set of your photos? 6 A. It sure looks like it. 7 Q. Okay. I'm just trying to make life a little 8 easier here. 9 Okay. I'll show you what I've marked as 10 Plaintiff's 24, which is the preliminary medical summary, 11 and that is 53 pages; correct? 12 A. Oh, hold that thought. This is preliminary 13 medical summary supporting documents? 14 Q. Supporting documents. Thank you. Yes. 15 A. 53 pages, yes. 16 Q. Okay. We'll just put that in the file. Is this 17 all the medical records or just the ones someone on your 18 staff deemed important? 19 A. Probably in this case all because we wouldn't 20 really receive anything that wasn't important, so 21 probably all. 22 Q. Did you review any medical records for Mr. or 23 Mrs. Bryson? 24 A. No. 25 Q. Would those be helpful to your opinion, or does</p>	<p>1 premature, but I don't know anything more about him than 2 that. 3 Q. Do you agree an unborn child at 24 weeks is more 4 vulnerable to injury than a two-year-old child? 5 MR. HILL: Object to form. 6 THE WITNESS: Oh, I don't know of any way to 7 analyze that. I'm sorry. And that all being equal, 8 right, so to what stimulus or what injurious mechanism, 9 you know, but even if we knew that, I'm not sure there's 10 any way to know that. I don't think there's any 11 literature out there to even think about that. 12 BY MS. CANNELLA: 13 Q. Have you ever cared for a patient with an AO 14 dislocation? 15 A. I have. 16 Q. Did they survive? 17 A. Sometimes yes; sometimes no. 18 THE REPORTER: Are you saying AO? 19 THE WITNESS: AO, like atlanto-occipital, so AO. 20 BY MS. CANNELLA: 21 Q. Is at atlanto-occipital dislocation the same 22 thing as an internal decapitation? 23 A. Some people call it that. I think it's a really 24 terrible way to call it, so I don't, but yes, some people 25 call it that.</p>



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<p style="text-align: right;">Page 158</p> <p>1 Q. Do you have any accident reconstruction opinions 2 in the case? 3 A. I do not. 4 Q. Was there any stress whitening on the car seat 5 aside from the stress whitening we've talked about so 6 far? 7 A. Yes. All over the place. 8 Q. All right. Do you have any opinions about where 9 the stress whitening spots came from? 10 A. Yes. It all came from the fact that the left 11 portion of the Row 2 seat was pushed forward and rotated 12 counter clockwise into the back of the child safety seat. 13 MS. CANNELLA: Okay. I'm going to look at some 14 of your inspection photos again of the car seat. 15 All right. I am showing you what I'll mark as 16 Plaintiff's Exhibit 41. It's from your file. It's Photo 17 R0017284. 18 (Whereupon Plaintiff's Exhibit 41 was marked 19 for identification.) 20 BY MS. CANNELLA: 21 Q. Is there deformation in this photo on the car 22 seat? 23 A. I don't know that I'd call it deformation, but I 24 would certainly say that there's significant stress 25 whitening.</p>	<p style="text-align: right;">Page 160</p> <p>1 it will cause stress whitening remote from the place that 2 there is physical contact. 3 Q. You have a picture of a tear in the cover on the 4 other side of the car seat. Do you know what caused 5 that? 6 A. Show me, so I'm sure I'm answering the right 7 question. 8 Q. Okay. It's R0017286, if you want to see the big 9 one, and then it's on screen. 10 A. Okay. So I'm glad I did that because that's not 11 the one I thought you were talking about. That is -- 12 hang on. Let me get to another photo. 13 That tear is due to interaction with the -- 14 likely due to interaction with the Row 2 seat back and 15 the child safety seat. 16 Q. Was there something hard on the second row seat 17 back that corresponds with that area? 18 A. No, not in that area. So -- and there's not 19 anything in particular below that cover on the polymer, 20 so it's just likely due to interaction. That one doesn't 21 have an obvious source like the one on the right side 22 does, so is it's likely just due to abrasive forces when 23 that seat is being pushed forward. 24 MS. CANNELLA: Okay. Mark this as Exhibit 43. 25 (Whereupon Plaintiff's Exhibit 43 was marked</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. And what is that from? Like, did anything 2 contact the car seat here? 3 A. The whole back of the child safety seat is in 4 contact with the Row 2 left seat back, so yes, but I 5 believe what caused this is likely the seat belt, the 6 vehicle seat belt. That's typical stress whitening at 7 the slot where the seat belt would go through there. 8 Q. Okay. Do you see any other photos in your 9 collection that would be good to look at the other areas 10 of stress whitening? 11 A. R0017277 shows some stress whitening. 12 Q. Okay. Let me pull that up so we can both look 13 at it. 277, you said? 14 A. Yes. 15 Q. Okay. Can you circle it on this photo, please? 16 A. There's some more here. Those are the ones I 17 see looking at the small versions. 18 Q. And does that come from -- have to come from 19 something in contact, direct contact, with the area 20 that's white, or can it just come from being warped from 21 pressure in other areas? 22 A. The latter, essentially. Polymer is somewhat 23 pliable. And so if -- when the Row 2 seat back is 24 rotated and pushed forward, the child safety seat is 25 going to do some movement or twisting, if you will, and</p>	<p style="text-align: right;">Page 161</p> <p>1 for identification.) 2 BY MS. CANNELLA: 3 Q. Any other stress whitening that you saw on the 4 car seat? 5 A. Yes, there's tons. Let me go back to where we 6 were before. There are certainly more photos of that 7 same area, but I won't torture you with all those. 8 Q. Thank you. 9 A. You're welcome. Photo R0017305. 10 Q. Okay. All right. And I think I see it. It 11 kind of towards the bottom of the picture in the middle? 12 A. Yes. 13 Q. All right. 14 A. And at the front of the belt slot, yep. 15 Q. Okay. And did this result from some direct 16 contact with something or more of a warping-type thing? 17 A. More of a twisting force. 18 MS. CANNELLA: Okay. We'll mark that as 19 Plaintiff's Exhibit 44. 20 (Whereupon Plaintiff's Exhibit 44 was marked 21 for identification.) 22 BY MS. CANNELLA: 23 Q. All right. Can you take a look at what we're 24 going to put up, which is R0017309? Can you see that? 25 A. Yes.</p>



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<p style="text-align: right;">Page 162</p> <p>1 Q. Okay. And can you show us where on that seat 2 Cohen's ear would have been roughly? 3 A. In the area of the head restraint adjustment 4 knob on the right of the seat, left the of the photo. 5 MS. CANNELLA: All right. I'll mark that as 6 Plaintiff's Exhibit 45. 7 (Whereupon Plaintiff's Exhibit 45 was marked 8 for identification.) 9 BY MS. CANNELLA: 10 Q. Okay. And you said there was a picture that 11 Mr. Lewis took that showed that the your theory works 12 from a surrogate standpoint. 13 Can you let me know what picture that is? 14 A. Yes. So Mr. Lewis's Photo D, like dog, S, like 15 Sam, C, like Charles, underscore, 2462.jpg. 16 Q. All right. Let me get to it. It should be up 17 on your screen. Can you see it there? 18 A. Yes. 19 Q. All right. Okay. So tell me what this picture 20 tells you in regards to your opinion? 21 A. Well, Mrs. Bryson had testified that Cohen was 22 asleep at the time or right before this crash happened. 23 She obviously wasn't looking at him right at the moment 24 and leaning inboard or to his right. 25 So certainly this child is not doing that. This</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I'm not sure what you mean by opposing forces, 2 but -- 3 Q. Like, if everything was flip-flopped, you know 4 what I'm saying? We can look at the -- we can look at 5 the distance from the child's ear to the adjustment knob 6 on the left side instead of the right side, is what I'm 7 saying. 8 A. So this child is leaning forward. This is not a 9 sleeping kid, who's leaning against the head restraint or 10 headrest of his child safety seat. 11 Q. Uh-huh. 12 A. So we'd have to be there, first of all. And 13 again if it's left, instead of right, and then leaning, 14 the child would have to be leaning outboard in this case, 15 flip-flopped from our -- the real case. 16 And then yes, his ear -- his skull adjacent to 17 his ear would be very near the location, adjacent to the 18 location of that adjustment knob statically, and then 19 dynamically as the seat rotates and the child seat 20 rotates and the child seat is twisted somewhat, and, you 21 know, the crash all happens, yes, it is in that area 22 contacting his skull. 23 Q. Okay. But you didn't do any surrogate testing 24 to test that theory; correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 163</p> <p>1 child is very focused on whoever is taking the picture, 2 who I think is Mr. Lewis. But if we can imagine the 3 child, you know, sleeping, sitting back and leaning 4 inboard, his -- the area of his injury is adjacent to the 5 right head restraint adjustment knob. 6 And so when the vehicle seat is rotated and 7 pushed forward, and the child seat is pushed forward and 8 twisted somewhat to cause all that stress whitening, that 9 knob interacts with Cohen Bryson's ear -- I'm sorry, 10 head, skull, in the area of his ear causing his depressed 11 skull fracture and pushing his head forward and to the 12 left causing his AO dissociation and brainstem injury. 13 Q. Okay. So it's your opinion then that the car 14 seat warped enough to get that headrest adjustment knob 15 down close to the top of Cohen's ear; correct? 16 A. Yes. And he's pre-positioned closer to it, not 17 like in this photo because, again, this child is very 18 interested in what Mr. Lewis is doing, taking his photos. 19 Q. Okay. But does it help that he's -- so he's 20 just looking to the left -- or she, the child is looking 21 to the left in this picture, and that adjustment knob 22 then if you're in -- if you had the opposing forces from 23 what we had in our crash, you think that that adjustment 24 knob could get down to where the left is, the left 25 adjustment knob could get down to the left ear?</p>	<p style="text-align: right;">Page 165</p> <p>1 MS. CANNELLA: I'm going to mark this picture as 2 Plaintiff's Exhibit 46. 3 (Whereupon Plaintiff's Exhibit 46 was marked 4 for identification.) 5 BY MS. CANNELLA: 6 Q. Do you agree there were milliseconds where the 7 crash had begun, but Cohen had not yet received an 8 injury? 9 A. Yes. 10 Q. Do you agree that Cohen only experienced his 11 death once the intrusion reaches him? 12 A. Yes. 13 Q. Did you do anything to quantify the amount of 14 second-row intrusion that would have been required to 15 cause Cohen's death? 16 A. I did not. 17 Q. Do you agree there's randomness to motor vehicle 18 accidents? 19 MR. HILL: Object to form. 20 THE WITNESS: I don't know how to answer that 21 question. 22 BY MS. CANNELLA: 23 Q. In other words, you could have the exact same 24 wreck twice, but the outcome -- there would be 25 differences in the outcome?</p>

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<p style="text-align: right;">Page 166</p> <p>1 MR. HILL: Object to form.</p> <p>2 THE WITNESS: No, not if everything is exactly</p> <p>3 the same.</p> <p>4 BY MS. CANNELLA:</p> <p>5 Q. Is it your opinion that Cohen -- strike that.</p> <p>6 Would Cohen have died if there was one</p> <p>7 millimeter of intrusion into the second row?</p> <p>8 MR. HILL: Object to form.</p> <p>9 THE WITNESS: I'm not sure I can answer that. I</p> <p>10 can't answer the specific number of millimeters or</p> <p>11 centimeters or inches where he doesn't get the injury</p> <p>12 versus he does get injury because what's important is the</p> <p>13 fact that that intrusion is occurring with a lot of</p> <p>14 velocity to it or speed to it because the intruding</p> <p>15 structures aren't coming in slowly, you know.</p> <p>16 So it's not just the fact that there's</p> <p>17 intrusion. It's the fact that there's dynamic very fast</p> <p>18 intrusion, so I don't think there's a specific number</p> <p>19 where we can say this is how many inches he gets the</p> <p>20 injury versus this is how many inches or millimeters</p> <p>21 where he doesn't.</p> <p>22 BY MS. CANNELLA:</p> <p>23 Q. Do you believe that Cohen experienced any pain</p> <p>24 or suffering in this crash?</p> <p>25 A. I don't. I agree with Dr. Eisenstat that he was</p>	<p style="text-align: right;">Page 168</p> <p>1 A. If there's evidence of movement or vocalization.</p> <p>2 If they say that they're in pain and awake. They're</p> <p>3 awake and saying they are in pain.</p> <p>4 Other people's characterizations of whether a</p> <p>5 person is conscious or not, although we always have to</p> <p>6 take those with a grain of salt.</p> <p>7 And then based on the jury, injuries or injury</p> <p>8 that they have, whether they could be conscious or could</p> <p>9 be alive with those injuries.</p> <p>10 Q. Did you do anything to analyze the accuracy or</p> <p>11 reliability of the accident reconstruction in this case?</p> <p>12 MR. HILL: Object to form.</p> <p>13 THE WITNESS: Not that I did my own</p> <p>14 reconstruction and compared it to Mr. Grimes'</p> <p>15 reconstruction, but I always -- being a certified</p> <p>16 reconstructionist, I always listen to a reconstruction</p> <p>17 and do a gut check.</p> <p>18 Does the PDOF seem to be correct, does the</p> <p>19 Delta V seem to be correct, and in this case, yes, I</p> <p>20 agree with Mr. Grimes. I certainly have no independent</p> <p>21 reconstruction opinions, nor, again, did I do my own</p> <p>22 reconstruction to compare his and mine.</p> <p>23 BY MS. CANNELLA:</p> <p>24 Q. Have you ever done an autopsy?</p> <p>25 A. Not by myself, only participated and assisted.</p>
<p style="text-align: right;">Page 167</p> <p>1 unconscious immediately, and then, unfortunately,</p> <p>2 deceased very shortly thereafter.</p> <p>3 Q. Do you disagree with anything that Dr. Eisenstat</p> <p>4 said at his deposition?</p> <p>5 MR. HILL: Object to form. Go ahead.</p> <p>6 THE WITNESS: Well, as we talked about before,</p> <p>7 he missed the tib/fib injury, so that's not really</p> <p>8 disagreeing with something he said in his dep because he</p> <p>9 didn't talk about it in his dep, but I disagree with him</p> <p>10 in that way.</p> <p>11 Once he clarified the temporal bone fracture, I</p> <p>12 no longer disagree with him, but in his report where he</p> <p>13 called it a sphenoid fracture, I disagree with that.</p> <p>14 And then once he clarified that the basilar</p> <p>15 skull fracture went all the way across the base of the</p> <p>16 skull, across the foramen magnum, I agree with that.</p> <p>17 That was in his deposition, but was not called out in his</p> <p>18 report. I think that's it.</p> <p>19 Q. Okay. What evidence do you look for to</p> <p>20 determine whether there's been pain or suffering that</p> <p>21 someone experienced?</p> <p>22 A. Well, several things. One, are they conscious;</p> <p>23 two, are they alive; and then, three, if there's any</p> <p>24 evidence of pain and suffering.</p> <p>25 Q. And how do you know if they're conscious?</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Have you ever worked as a medical examiner?</p> <p>2 A. No.</p> <p>3 Q. Would you be qualified to serve as a medical</p> <p>4 examiner in Georgia?</p> <p>5 A. I doubt it. I don't know what their</p> <p>6 qualifications are, but I suspect they require a</p> <p>7 residency in forensic pathology, so I doubt it, but I</p> <p>8 don't know for sure.</p> <p>9 Q. Did you design any tests while you were at Ford?</p> <p>10 A. Yes.</p> <p>11 Q. Can you explain which tests you designed?</p> <p>12 A. The one that comes to mind is outlined in my SAE</p> <p>13 paper regarding onboard refueling vapor collection, which</p> <p>14 is in my CV. Do you want more details about it?</p> <p>15 Q. No, that's okay.</p> <p>16 A. I didn't think so. There -- so I did a huge</p> <p>17 recall or campaign regarding a fuel system concern on</p> <p>18 F Series -- some F Series trucks. And we had to do</p> <p>19 testing to figure out if our fix was going to work, so I</p> <p>20 designed that test.</p> <p>21 We had a noise vibration and harshness concern</p> <p>22 on some F Series and Bronco trucks regarding like a water</p> <p>23 hammer effect in the fuel system, and we had to design a</p> <p>24 fix. And so we had to design -- I had to design the test</p> <p>25 to make sure that our fix worked.</p>

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<p style="text-align: right;">Page 170</p> <p>1 Q. Did you design any crash testing?</p> <p>2 A. Oh, heavens no.</p> <p>3 Q. Okay. Do you have hospital privileges anywhere?</p> <p>4 A. Not anymore.</p> <p>5 Q. Did you visit the scene of this crash?</p> <p>6 A. No.</p> <p>7 Q. Did you measure the crash in either the subject</p> <p>8 wreck or the crash test?</p> <p>9 A. No. There are scans that we could do some</p> <p>10 measurements, but I can't tell you what those numbers are</p> <p>11 today.</p> <p>12 Q. And there's a scan in your file. Is that one</p> <p>13 that you performed or someone else?</p> <p>14 A. Ms. Gaul, the test engineer, performed that</p> <p>15 scan.</p> <p>16 Q. And what is it of?</p> <p>17 A. The subject vehicle.</p> <p>18 Q. Okay. Did you use -- come to any conclusions</p> <p>19 based on that scan?</p> <p>20 A. Not the scan in particular, no.</p> <p>21 Q. Did you scan the inside of the vehicle or just</p> <p>22 the outside?</p> <p>23 A. Probably not the outside at all, just the</p> <p>24 inside.</p> <p>25 Q. Okay. You've never published any papers on auto</p>	<p style="text-align: right;">Page 172</p> <p>1 Are those the things you're going to testify in</p> <p>2 relation to the Exponent test?</p> <p>3 A. I mean, like we talked about before, I'm not</p> <p>4 going to talk about forces in terms of pounds or newtons</p> <p>5 or anything like that, so I would better characterize it</p> <p>6 as noted in my report.</p> <p>7 So what I will testify about is that injury</p> <p>8 causation would have -- you know, the same injury outcome</p> <p>9 would have occurred for Cohen Bryson whether -- in an</p> <p>10 unlifted -- let me start over.</p> <p>11 The same injury outcome would have occurred for</p> <p>12 Cohen Bryson whether or not Mr. Elliott's truck were</p> <p>13 lifted or not.</p> <p>14 Q. And how -- can you give me like a short summary</p> <p>15 of how the crash test informs your opinions about what</p> <p>16 happened during the crash?</p> <p>17 MR. HILL: Object to the form, but go ahead.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: So our crash test at Exponent</p> <p>20 doesn't really help us understand what happened during</p> <p>21 the subject crash because of the independent variable of</p> <p>22 no lift kit in the Exponent test. So it doesn't because</p> <p>23 it's a different crash.</p> <p>24 Q. Okay. And your disclosure says that you relied</p> <p>25 on the crash reconstructions and simulations. What are</p>
<p style="text-align: right;">Page 171</p> <p>1 design; correct?</p> <p>2 A. Correct -- oh, I'm sorry. Wait. Only in terms</p> <p>3 of onboard fuel vapor recovery.</p> <p>4 Q. Okay.</p> <p>5 A. But nothing else.</p> <p>6 Q. All right. I want to look in your report -- or</p> <p>7 I'm sorry, your disclosure, which I've marked as</p> <p>8 Plaintiff's Exhibit 15.</p> <p>9 Do you see that on your screen?</p> <p>10 A. Yes.</p> <p>11 Q. Have you seen your disclosure before?</p> <p>12 A. Yes.</p> <p>13 Q. I want to look at the highlighted sentence here,</p> <p>14 so if you could just take a second and read up to that</p> <p>15 highlighted sentence.</p> <p>16 Just let me know when you're done.</p> <p>17 A. Okay.</p> <p>18 Q. That highlighted sentence says that you're</p> <p>19 expected to testify regarding the same subjects in</p> <p>20 relation to the vehicle crash testing performed at</p> <p>21 Exponent. And the same subjects, as I understand it, are</p> <p>22 biomechanics of the occupants inside the Escape at the</p> <p>23 time of the incident, the cause of injury and death to</p> <p>24 Cohen, and the forces experienced by Cohen in the subject</p> <p>25 crash.</p>	<p style="text-align: right;">Page 173</p> <p>1 you talking about there?</p> <p>2 A. Likely Mr. -- is it Rocha? I'm sorry. I don't</p> <p>3 remember his name.</p> <p>4 Q. Rosch?</p> <p>5 A. Thank you. I think did some simulations, but I</p> <p>6 didn't really rely upon those. I certainly reviewed</p> <p>7 them, but more I'm relying on the crash reconstruction.</p> <p>8 Q. Okay. Did the defense experts do any crash</p> <p>9 simulations?</p> <p>10 A. Unless we're going to call the Exponent crash</p> <p>11 testing a simulation, but not like Mr. Rosch did.</p> <p>12 Q. Okay. I think you're thinking of Mr. Buckner?</p> <p>13 A. Okay. You're probably right. Sorry about that,</p> <p>14 Buckner.</p> <p>15 Q. All right. What defense experts are you relying</p> <p>16 on to form your opinion?</p> <p>17 A. Mr. Wes Grimes and Mr. Charlie Crosby. Unless</p> <p>18 you asked me something you haven't asked me yet, I don't</p> <p>19 think Mr. Pasquerella.</p> <p>20 Q. Was there something I need to ask you about</p> <p>21 Mr. Pasquerella?</p> <p>22 A. I don't think so, but those are the only defense</p> <p>23 experts I know of, so I would have to consider him if you</p> <p>24 asked me something about what he said, but I rely upon</p> <p>25 Crosby and Grimes.</p>

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<p>1 Q. Do you have any opinions about what 2 Mr. Pasquerella said, or are you leaving that to him? 3 A. I'm leaving that to him. 4 Q. Okay. Great. Did you rely on anything 5 Mr. Buckner did? 6 A. No. 7 Q. Did you rely on anything Mr. Lewis did? 8 A. No. 9 Q. Did you rely on anything Mr. Rosch did? 10 A. No. 11 Q. Did you rely on any RC, Rough Country, documents 12 produced in discovery? 13 A. I'm probably going to get this wrong because 14 it's a lawyer sort of thing, but I think you mean like 15 documents that were created by Rough Country as opposed 16 to my client is Rough Country, and they produced medical 17 records to me. I think that's what you mean. 18 Q. Yeah, I'll rephrase it. 19 Did you rely on any internal Rough Country 20 documents to form your opinion? 21 A. No. 22 Q. Does your -- is your opinion -- let's see how to 23 phrase this. Would you know that Cohen would have 24 survived -- I'm sorry. Strike that. 25 Would you be able to give the opinion that Cohen</p>	<p>1 A. Is it just preliminary file summary, not the 2 supporting documents? Yes. A gentleman named 3 Ed Abucevitch. 4 Q. And what's his qualifications? 5 A. He is -- Mr. Abucevitch is a paralegal, who has 6 been working at BRC for more than 20 years. 7 Q. And he basically just goes through the documents 8 and pulls language and puts it in the summary document? 9 A. I mean, he summarizes the nonmedical documents 10 that are provided to us in the case and keeps track of, 11 like, the list of materials that's created by 12 Mr. Abucevitch. 13 Q. The preliminary file summary supporting 14 documents I've marked as Plaintiff's Exhibit 22. 15 2520 pages, is that a complete copy? 16 A. 2520, yes. 17 Q. That is all the documents you've received in the 18 case or some other subset of it? 19 A. It's typically not -- well, it's never medical 20 records. Those are separate. But then it's generally a 21 subset. Sometimes it's every single thing we've received 22 except medical, but it's usually a subset. 23 There are usually some things that don't go in 24 there. Photos don't go in there generally, things like 25 that.</p>
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<p>1 would have died in an unlifted -- a wreck with an 2 unlifted F250 without having run the crash test? 3 MR. HILL: Object to the form, but you can go 4 ahead. 5 THE WITNESS: Yes. Based on Mr. Grimes' 6 opinion, based on his expertise that the F250 -- unlifted 7 F250 would intrude into the occupant space because of 8 bumper height mismatch, and I will -- I will be corrected 9 by Mr. Grimes if he says that's a terrible way to 10 characterize it. 11 But even before we ran the test, his opinion 12 that it was -- his opinion was that it was likely that 13 due to the bumper heights of the two vehicles, probably a 14 better way to say it, the F250 unlifted would still 15 intrude into the Escape. 16 BY MS. CANNELLA: 17 Q. So it's Grimes' opinion. Anything else that you 18 rely on and not need the crash test for your opinion 19 about the alternative design? 20 MR. HILL: Object to the form. 21 THE WITNESS: No. 22 BY MS. CANNELLA: 23 Q. No. All right. Okay. I've marked as 24 Plaintiff's Exhibit 21 the preliminary file summary. Who 25 prepared this document?</p>	<p>1 Q. But generally it's pretty much everything? 2 A. Yes. 3 Q. Asides from medical records and photos, okay. 4 I'm going to show you what I've marked as 5 Plaintiff's Exhibit 23, the medical summary, preliminary 6 medical summary. 7 Do you see that on the screen? 8 A. Yes. 9 Q. It's 13 pages; correct? Is your document 13 10 pages? 11 A. I'm looking. 12 Q. Oh, okay. 13 A. It's opening. Sorry. 14 Q. That's all right. 15 A. Yes, 13 pages. 16 Q. Okay. All right. Let me go through and see 17 what else I've got here. 18 Great. I want to make sure I understand what 19 injuries the deformation of the child seat caused 20 according to your opinion. 21 The ones that I see in the report are right ear 22 laceration, and ecchymosis, temporal scalp hemorrhage, 23 temporalis muscle hemorrhage, temporal depressed skull 24 fracture with extension across skull base, subarachnoid 25 hemorrhage at the base of the brain; is that correct?</p>

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<p>1 A. That's part of it, yes.</p> <p>2 Q. Is that all the ones that the knob -- the</p> <p>3 headrest adjustment knob caused?</p> <p>4 A. No. Read the next sentence.</p> <p>5 Q. What page are you on looking at?</p> <p>6 A. Page 11 of my report. I mean, I can read it.</p> <p>7 I'm sorry. I didn't mean that. So also caused by that</p> <p>8 interaction was the AO dissociation and brain stem</p> <p>9 laceration.</p> <p>10 Q. Okay.</p> <p>11 A. And then as a sequela of the basilar skull</p> <p>12 fracture, the right periorbital ecchymosis.</p> <p>13 Q. Okay. And are those -- those all -- where are</p> <p>14 all those injuries? Are they all in the same area by the</p> <p>15 ear?</p> <p>16 A. No.</p> <p>17 Q. Can you kind of explain to us where they are?</p> <p>18 A. Yeah. So the skull fracture, the ear laceration</p> <p>19 obviously, the temporalis muscle hemorrhage, temporal</p> <p>20 scalp hemorrhage -- I don't think I said that yet -- are</p> <p>21 all in the same area, which is around the right ear.</p> <p>22 There was an abrasion behind his ear as well, which --</p> <p>23 all that is in that same area.</p> <p>24 Then the extension of the depressed skull</p> <p>25 fracture across the base of the brain is inside that</p>	<p>1 But it certainly helps to explain why</p> <p>2 Mr. Elliott ran into the back of the Escape at 50</p> <p>3 some-odd miles an hour. That, and that he was apparently</p> <p>4 Facetiming as well.</p> <p>5 Q. The reason that he ran into the back of the</p> <p>6 truck, or into the back of the Escape, doesn't affect</p> <p>7 your injury causation opinion; correct?</p> <p>8 A. Well, it does because without that, we wouldn't</p> <p>9 have an injury. So the whole sequence becomes the injury</p> <p>10 causation, but as I said a minute ago, whether</p> <p>11 Mr. Elliott is drunk or not or was Facetiming or not</p> <p>12 doesn't help me understand exactly what Master Bryson's</p> <p>13 injuries were and exactly how he received them in the</p> <p>14 vehicle from the knob, et cetera, et cetera.</p> <p>15 But yes, the crash doesn't happen at all if</p> <p>16 Mr. Elliott doesn't run into the back of the Escape, and</p> <p>17 therefore that's injury causation.</p> <p>18 Q. Do you need to be an expert to know that?</p> <p>19 A. You don't have to be an expert to know that if</p> <p>20 the crash doesn't happen, we're not here because there's</p> <p>21 no injury, but you -- certainly, my expertise as a</p> <p>22 board-certified ER doctor helps me understand what an</p> <p>23 alcohol level of -- I believe it was 252 milligrams per</p> <p>24 deciliter means in terms of decision making and</p> <p>25 obtundation and things like that.</p>
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<p>1 area. I can't point to it because it's in there.</p> <p>2 And then the right periorbital ecchymosis is</p> <p>3 around the right eye.</p> <p>4 The AO dissociation I can't really point to</p> <p>5 either, but that is where the occiput of the skull</p> <p>6 articulates with the Cervical 1 vertebra, and then if we</p> <p>7 were to look down into that area, that's where the brain</p> <p>8 stem is located.</p> <p>9 Q. Can you explain in your report where it says</p> <p>10 that him being immediately unconscious is demonstrated by</p> <p>11 the lack of bleeding at the interosseous catheter site.</p> <p>12 Why is that?</p> <p>13 A. I didn't say that. What I said was the lack of</p> <p>14 bleeding at the IO cite is indicative of cessation of</p> <p>15 cardiopulmonary function.</p> <p>16 Q. So he's not -- his heart is not pumping so</p> <p>17 there's not blood coming out of that area; correct?</p> <p>18 A. Right, or bruising under the skin. Right,</p> <p>19 there's no bleeding occurring.</p> <p>20 Q. Your report talks a lot about the drunk driver</p> <p>21 that was involved in the wreck. Do your opinions depend</p> <p>22 at all on whether the driver was drunk or not?</p> <p>23 A. I mean, I have an opinion that Mr. Elliott was</p> <p>24 intoxicated, but does that directly affect the exact</p> <p>25 place that Cohen Bryson received his injuries? No.</p>	<p>1 Q. How long was the time lapse between the time</p> <p>2 Mr. Bryson saw Cohen's head -- I'm sorry. Strike that.</p> <p>3 How long was the time lapse between the time</p> <p>4 Mrs. Bryson saw Cohen's head turn to the right and the</p> <p>5 time of the crash?</p> <p>6 A. Well, she didn't really say turned to the right.</p> <p>7 She testified that he was the leaning and inboard or to</p> <p>8 his right, sleeping. And we don't really know.</p> <p>9 She said it was about the time that they left</p> <p>10 Mr. Bryson's mom's house, which they estimated, I think,</p> <p>11 was about 11:00 p.m. And the crash occurred, I want to</p> <p>12 say, at 11:15 p.m., so maybe as long as 15 minutes.</p> <p>13 But we don't really know because there certainly</p> <p>14 is no evidence of when they left Mr. Bryson's mother's</p> <p>15 house.</p> <p>16 Q. Is it your expert opinion that Cohen's head</p> <p>17 didn't move at all from the time that they left the house</p> <p>18 and Mrs. Bryson saw him and the time of the wreck?</p> <p>19 A. I have no opinion as to what he did in between;</p> <p>20 however, his injuries indicate this he was likely leaned</p> <p>21 to the right at the time of the injuries or the time of</p> <p>22 the crash, which would match what Mrs. Bryson said --</p> <p>23 testified to before the crash.</p> <p>24 What he did in between those times, I don't</p> <p>25 know. I can't say if he stayed there or if he moved</p>

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<p style="text-align: right;">Page 182</p> <p>1 around or not.</p> <p>2 Q. Can you show me how you think his head was</p> <p>3 positioned at the time of the wreck?</p> <p>4 A. No. I can just describe it, I suppose. I don't</p> <p>5 have any way to really show it, other than to say he was</p> <p>6 leaning inboard or to his right and sleeping.</p> <p>7 Q. Was his head -- like, were his eyes to the</p> <p>8 right, or was it more his head down and just kind of</p> <p>9 flopped to the right?</p> <p>10 A. I doubt his head was turned much to the right.</p> <p>11 I suspect he was just leaning towards the right based on</p> <p>12 his injuries, the evidence of his injuries and the</p> <p>13 reconstruction and the child safety seat deformation.</p> <p>14 Q. So face forward with the neck cocked to the</p> <p>15 right?</p> <p>16 A. Mostly. Was his head turned a little to the</p> <p>17 right? Sure, maybe.</p> <p>18 Q. Can you tell from the AO dislocation, like the</p> <p>19 fracture, whether there was any angularity to that?</p> <p>20 A. The AO dissociation is not a fracture, but from</p> <p>21 the AO dissociation, no. Just the fact that there's a</p> <p>22 dissociation, and that's as much as Dr. Eisenstat</p> <p>23 documented, no. If we had a CT scan or an MRI, we likely</p> <p>24 could because then we would be able to see the</p> <p>25 orientation of the occiput on C1.</p>	<p style="text-align: right;">Page 184</p> <p>1 THE VIDEOGRAPHER: We're back on the record.</p> <p>2 Time is 4:02.</p> <p>3 BY MS. CANNELLA:</p> <p>4 Q. Okay. Dr. Gwin, did the padding on the car seat</p> <p>5 come between Cohen and the headrest adjustment knob at</p> <p>6 all?</p> <p>7 A. No.</p> <p>8 Q. Did you measure the amount of padding?</p> <p>9 A. I don't think I measured the padding anywhere on</p> <p>10 the child safety seat that I recall.</p> <p>11 Q. How many other cases have you seen where there's</p> <p>12 a child restraint, a child in a child restraint, and an</p> <p>13 AO dislocation occurs where the child stays loaded into</p> <p>14 the car seat?</p> <p>15 A. So we have a crash. We have an AO dissociation</p> <p>16 and?</p> <p>17 Q. And the child's head is not getting outside of</p> <p>18 where it's supposed to be in the car seat?</p> <p>19 MR. HILL: Object to the form.</p> <p>20 THE WITNESS: Oh, sorry. The videographer was</p> <p>21 saying something. I wanted to make sure I didn't miss</p> <p>22 something.</p> <p>23 How many other cases? I mean, I'm estimating</p> <p>24 here, five or six probably.</p> <p>25 BY MS. CANNELLA:</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Okay. Your report also talks about Mr. Elliot's</p> <p>2 DUI plea and the sentence and the time he will serve. Is</p> <p>3 that part of your expert opinion?</p> <p>4 A. Well, everything that's in my report is part of</p> <p>5 my expert opinion, but the fact that he received a</p> <p>6 40-year sentence and will serve 20 likely doesn't</p> <p>7 necessarily help me understand how Master Bryson received</p> <p>8 his injuries specifically.</p> <p>9 Q. Why didn't you add in your report that</p> <p>10 Mr. Elliott pled guilty to violating Georgia's criminal</p> <p>11 statute against lifting the structure of his truck more</p> <p>12 than two inches?</p> <p>13 A. I'm not sure I knew that.</p> <p>14 MS. CANNELLA: Okay. I might be close to done.</p> <p>15 BY MS. CANNELLA:</p> <p>16 Q. Have you told me all your opinions today?</p> <p>17 A. Between my report and this, as it stands today</p> <p>18 we've covered everything.</p> <p>19 MS. CANNELLA: Okay. If we want to take a quick</p> <p>20 break, I can check my notes, and we might be done.</p> <p>21 MR. HILL: Sure.</p> <p>22 THE WITNESS: Perfect.</p> <p>23 THE VIDEOGRAPHER: We're going off the record.</p> <p>24 Time is 3:45.</p> <p>25 (Whereupon a short recess break was taken.)</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Okay. And what were the names of those cases?</p> <p>2 A. Oh, heavens, I don't remember. I don't think</p> <p>3 any of them are even on my testifying history. I could</p> <p>4 look again to make sure, but I don't remember.</p> <p>5 MS. CANNELLA: Okay. Let me also go ahead and</p> <p>6 introduce Plaintiff's Exhibit 47, which is the testimony</p> <p>7 list as of September 2020.</p> <p>8 (Whereupon Plaintiff's Exhibit 47 was marked</p> <p>9 for identification.)</p> <p>10 Do you see that there?</p> <p>11 A. Barely. Let me make it much bigger. Okay.</p> <p>12 Q. Okay. I'm going to scroll through it and just</p> <p>13 sure it looks correct?</p> <p>14 A. Oh, I wouldn't know. I'm sure it is if it's --</p> <p>15 if it's out there.</p> <p>16 Q. Okay. Do you -- I can -- if you want to use</p> <p>17 this one as well, just let me know when you want me to</p> <p>18 scroll to go to the next page.</p> <p>19 A. Okay. You can go to the next page.</p> <p>20 Okay. Next page. I believe Harmon,</p> <p>21 H-a-r-m-o-n, versus Nissan.</p> <p>22 Q. Okay.</p> <p>23 A. I believe that child had an AO dissociation, but</p> <p>24 I could be confusing it with a different case, but I</p> <p>25 think so.</p>




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<p>1 Q. He wasn't in a car seat, was he?</p> <p>2 A. Like I said, I could be confusing it with a</p> <p>3 different case, but I believe he was restrained, so maybe</p> <p>4 not in a child safety seat, but I believe that child was</p> <p>5 restrained and stayed restrained and had an AO</p> <p>6 dissociation.</p> <p>7 Q. Okay. I'm looking for cases specifically with a</p> <p>8 child in the car seat and his head stays within the</p> <p>9 confines of the wings.</p> <p>10 A. Okay. Go to the next page. Boy, as we go</p> <p>11 longer and longer ago, I don't remember really anything</p> <p>12 about these cases, so I don't know beyond what I've</p> <p>13 already said.</p> <p>14 Q. Okay. How about your most recent list of cases,</p> <p>15 do you see any there?</p> <p>16 A. None of them -- none of the cases on my current</p> <p>17 testifying history involve a child with an AO</p> <p>18 dissociation at all.</p> <p>19 Q. Okay. All right. Are you familiar with the</p> <p>20 FMVSS 213 Standard, side impact crash test for child</p> <p>21 restraints?</p> <p>22 A. Very vaguely, not in detail.</p> <p>23 Q. Okay. Would a -- do you know whether a car seat</p> <p>24 would pass that test if the headrest adjustment knob</p> <p>25 impacted the child's -- the dummy's head?</p>	<p>1 PX39. Can you use a different color to draw a line where</p> <p>2 you think the top of Cohen's head was?</p> <p>3 A. Sure. Maybe.</p> <p>4 Q. Or you can use the same color. It's fine. It</p> <p>5 will be a line versus a shape.</p> <p>6 A. You're asking for the top of his head; right?</p> <p>7 Q. Yes?</p> <p>8 A. I mean, correct. Generally, that's probably a</p> <p>9 little tall, a little high, but generally in that area.</p> <p>10 Q. Okay. So before the crash that's where his head</p> <p>11 was?</p> <p>12 A. No. As he's receiving his injury.</p> <p>13 Q. Oh, okay.</p> <p>14 A. So this would be the distance between his</p> <p>15 skull -- his depressed skull fracture and the top of his</p> <p>16 head.</p> <p>17 Q. Okay. So before the crash happens, where is the</p> <p>18 top of his head?</p> <p>19 A. I don't have a way of saying that with a</p> <p>20 reasonable degree of scientific certainty because there's</p> <p>21 so many moving parties.</p> <p>22 Q. There's so many moving parts, what do you mean?</p> <p>23 A. In the crash there so many moving parts.</p> <p>24 Q. Oh, no. I just mean as they're driving down the</p> <p>25 road -- as the family is driving down the road, where is</p>
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<p>1 A. It certainly could, I would think, but I would</p> <p>2 certainly defer to a child safety seat expert if they</p> <p>3 said otherwise.</p> <p>4 Q. Do you know, as you sit here today, whether</p> <p>5 you've seen such a test.</p> <p>6 A. Where a child's head has hit the head restraint</p> <p>7 adjustment knob in a 213 test?</p> <p>8 Q. Yes, ma'am.</p> <p>9 A. No, not that I can think of.</p> <p>10 Q. And just to be clear, in your opinion Cohen's</p> <p>11 head is inside the wings of the car seat. He's not over</p> <p>12 the wings at all; correct?</p> <p>13 A. I would say that the top of his head is probably</p> <p>14 a little taller than the head restraint and the lateral</p> <p>15 wing, but the area of his injury is right there on that</p> <p>16 adjustment knob, which is inside the wing.</p> <p>17 Q. Can you say that again?</p> <p>18 A. I think the top of his head is likely above the</p> <p>19 wing, but the area of his injury is below the lateral</p> <p>20 wing and in the area of the adjustment knob.</p> <p>21 Q. Below the lateral wing, what does that mean?</p> <p>22 A. Below the top of the lateral wing, the wing.</p> <p>23 Q. Okay. Okay. All right. I just want to make</p> <p>24 sure I get this understanding clear.</p> <p>25 I'm going to show you what was previously marked</p>	<p>1 the top of his head?</p> <p>2 A. Right. I know what you're asking, and I'm</p> <p>3 saying because of all the things moving in the crash, I</p> <p>4 can tell you where he is at the moment of his injury,</p> <p>5 which is about right where I put it, whatever that</p> <p>6 distance would be between the area of his depressed skull</p> <p>7 fracture and the top of his head.</p> <p>8 But because of all the movement of various parts</p> <p>9 because of the vehicle dynamics, I can't say with a</p> <p>10 reasonable degree of scientific certainty exactly where</p> <p>11 his head was before the crash as he's sleeping and</p> <p>12 driving down -- riding down the road.</p> <p>13 Q. Okay. Can you just draw a line to show the</p> <p>14 height of it, even if it's not the exact place it is.</p> <p>15 Just how far up his head would go.</p> <p>16 MR. HILL: Object to the form.</p> <p>17 THE WITNESS: No, I'm not really sure. The best</p> <p>18 way to do that would be to take a surrogate the same</p> <p>19 height and weight and put him in an exemplar seat and</p> <p>20 take a photograph.</p> <p>21 It's orthogonal looking right at his head, other</p> <p>22 than that, it would be basically a guess, an educated</p> <p>23 guess, but a guess none the less.</p> <p>24 Q. Okay. Do you agree there's no breaking of the</p> <p>25 plastic material on the car seat?</p>

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<p style="text-align: right;">Page 190</p> <p>1 A. Not that I recall, just deformation. I don't  2 recall any fracturing.  3 Q. And his extremity injuries, you said they were  4 associated with the contact of the driver's seat;  5 correct?  6 A. Yes. And his left arm could be due to the door  7 or his child seat, like I said before, but his lower  8 extremities, yes, due to interaction with the driver's  9 seat back.  10 Q. And is there anything more you can tell us about  11 how this happened, like, did they get squished between  12 the front seat and the car seat or just run into it? Do  13 we know anything more about that?  14 A. Nothing more than I talked about before.  15 MS. CANNELLA: Okay. I'm going to mark as an  16 exhibit your correspondence. I'll mark it Plaintiff's  17 Exhibit 48.  18 (Whereupon Plaintiff's Exhibit 48 was marked  19 for identification.)  20 BY MS. CANNELLA:  21 Q. Do you see that on the screen?  22 A. Yes.  23 Q. And that is 48 pages. Does it sound like a full  24 copy of your correspondence?  25 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 interfered somehow.  2 Q. And when did you decide that the thing that  3 hit -- or that caused Bryson's fracture was the headrest  4 adjustment knob?  5 A. I don't know that I can speak to a date, but  6 certainly when I saw the child seat and understood  7 Master Bryson's injuries and saw his autopsy photographs,  8 somewhere in that time frame. I don't know what the date  9 was.  10 Q. So somewhere around the time that you did your  11 first vehicle inspection?  12 A. I've only done one vehicle inspection, and  13 assuming I had the autopsy photos and all of his medical  14 records then, yes, and I don't know why that wouldn't be  15 true, but I don't remember the order that I received  16 everything.  17 Q. Do you agree that your LEC presentation doesn't  18 mention the headrest adjustment knob?  19 A. It generally wouldn't. It's just usually  20 photographs, so, you know, I wouldn't -- those words  21 wouldn't be found in there.  22 Q. Do you agree that the LEC presentation doesn't  23 mention the headrest adjustment knob?  24 A. Yes.  25 Q. And do you agree that your report doesn't</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. Okay. There's a reference to photos from  2 Charlie Crosby's inspection. I didn't see those in your  3 file. Do you have those photos?  4 A. Like I told you before, we didn't regurgitate to  5 you everything we received from Counsel, from Rick --  6 from Mr. Hill's office, so you wouldn't see those in my  7 file that was produced to you, but yes, I have them.  8 Q. Okay. We do not have those, so I would like to  9 see those. Do you have those with you?  10 MR. HILL: They have been produced to you. They  11 were produced as part of the test data, documents,  12 scanned photos that you asked for that we sent a link to  13 last week or earlier this week.  14 MS. CANNELLA: Oh, okay. Okay. Great.  15 BY MS. CANNELLA:  16 Q. And did the individual who was originally the  17 expert on the case -- I'm blanking on his name now.  18 A. Dr. Reinhart.  19 Q. Yeah. Did Dr. Reinhart withdraw from the case  20 because he had opinions that would be detrimental to  21 Rough Country's positions in this case?  22 A. No. Like I said before, my understanding is  23 that he had a scheduling conflict. And like I said,  24 every summer he takes time off for a -- usually an  25 overseas vacation with his kids, and so that likely</p>	<p style="text-align: right;">Page 193</p> <p>1 mention the headrest adjustment knob?  2 A. Perhaps. But it talks about the child seat in  3 the area of the deformation, so maybe I didn't say those  4 words.  5 MS. CANNELLA: That's all I've got.  6 THE WITNESS: Great. Thank you.  7 MR. HILL: All right. I have no questions.  8 THE WITNESS: I will read and sign.  9 MS. CANNELLA: Okay. And I'll send a link to  10 the exhibits. Who should I e-mail it to?  11 THE VIDEOGRAPHER: Can I take is off, Counsel?  12 MR. HILL: That's fine with me.  13 MS. CANNELLA: Yes, absolutely.  14 THE VIDEOGRAPHER: We're off the record at  15 4:22 p.m. This concludes today's testimony given by  16 Dr. Lisa Gwin. The total number of media units used was  17 five, and it will be retained by Veritext.  18 (Whereupon the proceedings were concluded at  19 4:22 p.m.)  20 THE VIDEOGRAPHER: Counsel, are you ordering  21 video with the transcript?  22 MS. CANNELLA: Yes.  23 THE VIDEOGRAPHER: Thank you.  24 THE REPORTER: And do you need a copy too,  25 Mr. Hill?</p>

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<p>1 MR. HILL: Yes, I do.</p> <p>2 THE VIDEOGRAPHER: And do you need a video?</p> <p>3 MR. HILL: I need a video as well?</p> <p>4 THE VIDEOGRAPHER: Synced with the transcript?</p> <p>5 MR. HILL: Yes.</p> <p>6 THE VIDEOGRAPHER: Thank you.</p> <p>7 MR. HILL: I also need the transcript expedited.</p> <p>8 If I could get it by Tuesday, that would be great.</p> <p>9 THE REPORTER: Okay.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Dr. Lisa P. Gwin</p> <p>2</p> <p>3 June 17, 2024</p> <p>4 RE: Bryson, Santana And Joshua v. Rough Country, LLC</p> <p>5 5/3/2024, Dr. Lisa P. Gwin (#6676182)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 litsup-ga@veritext.com</p> <p>16 Return completed errata within 30 days from</p> <p>17 receipt of testimony.</p> <p>18 If the witness fails to do so within the time</p> <p>19 allotted, the transcript may be used as if signed.</p> <p>20</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
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<p>1 STATE OF CALIFORNIA )</p> <p>2 ) ss.</p> <p>3 COUNTY OF ALAMEDA )</p> <p>4</p> <p>5</p> <p>6 I, JUSTUS BALENTINE, Certified Shorthand</p> <p>7 Reporter No. 13859, hereby certify that the foregoing</p> <p>8 proceeding was taken by me at the time and place herein</p> <p>9 set forth;</p> <p>10 That the said proceeding was taken down by me</p> <p>11 in shorthand and thereafter transcribed under fmy</p> <p>12 direction and supervision, and I hereby certify the</p> <p>13 foregoing proceeding is a full, true, and correct</p> <p>14 transcript of my shorthand notes so taken;</p> <p>15 That dismantling this transcript will void the</p> <p>16 certification by the Certified Shorthand Reporter.</p> <p>17 I further certify that I am neither counsel for</p> <p>18 nor am I in any way related to any party to said action,</p> <p>19 nor am I in any way interested in the outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 17th day of June, 2024.</p> <p>22</p> <p>23 </p> <p>24 JUSTUS BALENTINE, CSR NO. 13859</p> <p>25</p>	<p>1 Bryson, Santana And Joshua v. Rough Country, LLC</p> <p>2 Dr. Lisa P. Gwin (#6676182)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Dr. Lisa P. Gwin Date</p> <p>25</p>

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<div>Page 198</div> <div>1 Bryson, Santana And Joshua v. Rough Country, LLC</div> <div>2 Dr. Lisa P. Gwin (#6676182)</div> <div>3 ACKNOWLEDGEMENT OF DEPONENT</div> <div>4 I, Dr. Lisa P. Gwin, do hereby declare that I</div> <div>5 have read the foregoing transcript, I have made any</div> <div>6 corrections, additions, or changes I deemed necessary as</div> <div>7 noted above to be appended hereto, and that the same is</div> <div>8 a true, correct and complete transcript of the testimony</div> <div>9 given by me.</div> <div>10</div> <div>11 _____</div> <div>12 Dr. Lisa P. Gwin Date</div> <div>13 *If notary is required</div> <div>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</div> <div>15 _____ DAY OF _____, 20____.</div> <div>16</div> <div>17</div> <div>18 _____</div> <div>19 NOTARY PUBLIC</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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